ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet August 9, 2005 at 10:00 a.m. in Room 149 of the Capitol Annex, Frankfort, Kentucky. See tentative agenda on pages 187-188 of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - AUGUST 9, 2005, at 10:00 a.m., Room 149 Annex

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501 KAR 6:020. Corrections policies and procedures.
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501 KAR 6:999. Corrections Secured Polices and Procedures.

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601 KAR 11:010. Fees relating to commercial driver's licenses. (Deferred from June)

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Department of Education

Pupil Transportation
702 KAR 5.080. Bus drivers' qualifications, responsibilities, and training

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Office of Workers' Claims

Department of Workers' Claims
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803 KAR 25 021. Individual self-insurers.
803 KAR 25.028. Repeal of 803 KAR 25 026.
803 KAR 25.030 Special fund and employer; joint liability
803 KAR 25.089 Workers' Compensation Medical Fee Schedule for Physicians.
803 KAR 25:170 Filing of claims information with the Office of Workers' Claims.

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Workers' Compensation Self-Insured Groups
806 KAR 52 010 & E. Forms for application, security deposits and financial statements. ("E" expires 11/18/2005) (Public Hearing in June)
806 KAR 52 020 & E. Aggregate excess insurance. ("E" expires 11/18/2005) (Deferred from July)
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902 KAR 20 320 & E. Psychiatric residential treatment facility operation and services. ("E" expires 11/18/2005) (Received Written Comments)
902 KAR 20 330 & E. Psychiatric residential treatment facilities. ("E" expires 11/18/2005) (Deferred from July)

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Division of Policy Development

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921 KAR 3 020. Financial requirements.
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922 KAR 1.520. High risk supplement for resource homes. (Hearing/Written Comments)
922 KAR 1:530. Post-adoption placement stabilization services.

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

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established 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 until the end of the calendar month in which the administrative regulation was published

The administrative regulation shall include the place, time, and date of the hearing, the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing 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, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JULY 15, 2005

(NOTE: Emergency administrative regulations expire 180 days from the date of filing, or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
201 KAR 11:011E

Nature of the emergency: This emergency administrative regulation is one that must be placed into effect immediately in order to meet an imminent threat to the public, health, safety, or welfare by remedying the loss of competition alleged in the complaint filed in United States of America vs Kentucky Real Estate Commission, United States District Court for the Western District of Kentucky Civil Action No. 3 05-cv-00188-JGH, and by eliminating the contradictory language in Section 1(2) and (3) of the existing administrative regulation, to safeguard the interest of the public against the harm that can result from a real estate agent's reliance upon these contradictory provisions. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient, because it will unduly delay settlement discussions in the pending federal action against the commission, which is referred to above and, because it will not timely address the confusion created by the contradictory language in 201 KAR 11.121, Section 1(2) and (3), which must be dealt with immediately. In addition, promulgating an emergency administrative regulation requiring rebates and inducements to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since, without the emergency administrative regulation, there would be a gap in enforcement during which time rebates and inducements could be offered verbally. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 13, 2005.

ERNIE FLETCHER, Governor
SUE TEEGARDEN, Chairperson

GENERAL GOVERNMENT CABINET
Real Estate Commission
(Emergency Amendment)

201 KAR 11:011E. 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

EFFECTIVE: July 13, 2005

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 executory 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 made 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) "Guaranteed sales plan" means an offer or solicitation:

(a) To guarantee the sale of an owner's real estate; or

(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(6) "Inducement" means money, a free gift, a prize, or any other thing of value that a licensee would offer a potential client or customer.

(7) "Rebate" means a payment of monies or anything of value by, or on behalf of, a licensee to a client or customer (or to a third party authorized by the client or customer to receive the payment) that is in connection with the provision of real estate brokerage services. Examples of rebates directed to third parties include, but are not limited to, payments to charities, home inspectors, and moving services. A rebate does not include compensation paid for real estate brokerage services to any third party who is not licensed in Kentucky to perform such services; this definition does not authorize a client or customer to permit or direct such payments to an unlicensed third party for performing such services. ~~[Prize" 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; and~~

~~(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;~~

~~b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated, and~~

~~c. Was not offered prior to closing.]~~

(8)~~[(7)]~~ "Required disclosure" means:

(a) 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;

(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and

(c) In television advertising, that the disclosure shall:

1. Be verbal and clearly understandable; or

2. 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, and in letters:

a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or

b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

(9) ~~[(8)]~~ "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

SUE TEEGARDEN, Chairperson
APPROVED BY AGENCY: July 8, 2005
FILED WITH LRC: July 13, 2005 at 11 a.m.

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 definitions for several statutory requirements.

(b) The necessity of this administrative regulation. Definitional sections are required to clarify certain key statutory terms

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation defines certain terms found in KRS Chapter 324

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions provide clarification for licensees and consumers to understand certain statutory terms

(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 eliminates the definition of "prize" as that issue will be handled by the amendments to 201 KAR 11.121 and adds the definitions of "inducement" and "rebate".

(b) The necessity of the amendment to this administrative regulation: In amending 201 KAR 11.121, it is necessary to delete the definition of "prize" and add the definitions of "inducement" and "rebate".

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to 201 KAR 11:121 will specifically allow licensees to offer rebates and inducements to their clients or customers, when licensees disclose to them, in writing, the terms of the rebates or inducements. This amendment defines "inducement" and "rebate" as those terms are used in 201 KAR 11.121.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will simply remove a definition and add 2 additional ones due to a clarification and codification in another proposed amendment. This definitional change will eliminate any confusion and discrepancies between the 2 regulations

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is simply a definitional amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is and amendment: This amendment is simply eliminating the definition of a term and adding 2 additional ones.

(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 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.

STATEMENT OF EMERGENCY
201 KAR 11:121E

Nature of the emergency: This emergency administrative regulation is one that must be placed into effect immediately in order to meet an imminent threat to the public, health, safety, or welfare by remedying the loss of competition alleged in the complaint filed in United States of America vs. Kentucky Real Estate Commission, United States District Court for the Western District of Kentucky Civil Action No. 3:05-cv-00188-JGH, and by eliminating the contradictory language in Section 1(2) and (3) of the existing administrative regulation, to safeguard the interest of the public against the harm that can result from a real estate agent's reliance upon these contradictory provisions. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient, because it will unduly delay settlement discussions in the pending federal action against the commission, which is referred to above and, because it will not timely address the confusion created by the contradictory language that must be immediately dealt with. In addition, promulgating an emergency administrative regulation requiring rebates and inducements to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since, without the emergency administrative regulation, there would be a gap in enforcement during which time rebates and inducements could be offered verbally. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 13, 2005.

ERNIE FLETCHER, Governor
SUE TEEGARDEN, Chairperson

GENERAL GOVERNMENT CABINET
Real Estate Commission
(Emergency Amendment)

201 KAR 11:121E. Improper conduct.

RELATES TO: KRS 324.010(3), 324.160(4)(f), (l), (m), (o), (w), (v), (5), (7), 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

EFFECTIVE: July 13, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. The following shall be improper for any licensed agent:

(1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services

(2)(a) For the protection of the client or customer, to fail to disclose in writing to the licensee's clients or customers the terms of any rebate or inducement [~~To offer, either through advertising, direct contact, or by others, to the general public, any prize, money, free gift, rebate or thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection~~].

(b) It shall not be improper conduct to disseminate information:

1. About the fee or other compensation the licensed agent agrees to charge for his or her services; or

2. About inducements and rebates offered by the licensed agent or his or her clients or customers [~~agent's client~~].

(3) [~~It shall not be improper conduct to:~~

~~(a) Advertise the fee or other compensation the licensed agent agrees to charge for his services;~~

~~(b) Advertise or distribute goods or services offered by others;~~

~~(c) Distribute marketing materials bearing the name or logo of the licensee or licensee's broker or company including but not limited to, matchbooks, magnets, pens, calculators, umbrellas, or calendars having a cost of not more than ten (10) dollars per item;~~

~~(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.~~]

~~(4)~~] 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) [~~(5)~~] 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, or

(f) Accounting

(5) [~~(6)~~] To advertise guaranteed sales plan without required disclosure of:

(a) Whether a fee is charged for participation;

(b) Whether the real estate shall meet qualifications for participation;

(c) 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

(d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.

(6) [~~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 and in letters:~~

~~(i) Which are eighteen (18) video scan lines in size for letters which are all upper case, or~~

~~(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.~~

~~(7)~~] To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

(7) [~~(8)~~] 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; or

(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below, 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 filling 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, realtors, lender, between application and closing to appraise 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 not commensurate with the actual work performed, or

(e) Requests or receives compensation for work that is not actually performed by him or her.

(8) [~~(9)~~] A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.

SUE TEEGARDEN, Chairperson

APPROVED BY AGENCY: July 8, 2005

FILED WITH LRC: July 13, 2005 at 11 a.m.

CONTACT PERSON. Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

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 license 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 under KRS 324.160(4)(v).

(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)(v).

(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 licensees to offer rebates and inducements to their clients or customers, when licensees disclose to them, in writing, the terms of the rebates or inducements.

(b) The necessity of the amendment to this administrative regulation: This amendment allows rebates and inducements if they are in writing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies what will be allowed under the enabling statutes, with the required written disclosure.

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

tion of the statutes. Promulgating a regulation allowing rebates and inducements and requiring them to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally.

(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 group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is and amendment: This amendment will allow rebates and inducements that licensees disclose, in writing, to clients and customers.

(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 fees will be needed.

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

STATEMENT OF EMERGENCY
902 KAR 4:030E

This emergency administrative regulation is being promulgated in response to SB 24 that was passed by the 2005 legislature in regular session and expands the Newborn Screening Program from the current four (4) disorders to twenty-eight (28) disorders and establishes a fee to cover the actual cost to the cabinet beginning July 1, 2005. Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky newborns because of the lack of necessary guidelines for implementation of expanded newborn screening as mandated in SB 24. In addition, SB 24 was declared an emergency and was signed by the Governor on March 11, 2005. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Department for Public Health
Division of Adult and Child Health Improvement
(Emergency Amendment)

902 KAR 4:030E. Newborn screening for inborn errors of metabolism and other inherited disorders known as Newborn Screening Program.

RELATES TO: KRS 214.155

STATUTORY AUTHORITY: KRS 194.050, 211.090, 214.155, [1994 (1st Extra. Sess.) Ky. Acts ch. 2, pt. IX, sec. 24a]

EFFECTIVE DATE: July 1, 2005

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Human Resources is authorized by KRS 214.155 to require that infants be tested for inborn errors of metabolism, and other inherited disorders [such as phenylketonuria (PKU)], and to establish a schedule of fees to cover the actual costs to the cabinet for the Newborn Screening Program [testing samples for inborn errors of metabolism]. The purpose of this administrative regulation is to require that infants be tested for [phenylketonuria (PKU), galactosemia, sickle cell disease, and hypothyroidism, which are] inborn errors of metabolism or other inherited disorders as specified in KRS 214.155, and to establish the schedule of fees to cover actual costs of the Newborn Screening Program [testing]

Section 1. Tests for inborn errors of metabolism or other inherited disorders for newborn babies as part of newborn screening [be completed as follows:]

(1) Newborn screening shall include the following tests:

(a) 3-methylcrotonyl-CoA carboxylase deficiency (3MCC);

(b) 3-OH 3-CH3 glutaric aciduria (HMG);

(c) Argininosuccinic acidemia (ASA);

(d) Beta-ketothiolase deficiency (BKT);

(e) Biotinidase disorder;

(f) Carnitine uptake defect (CUD);

(g) Citrullinemia (CIT);

(h) Congenital adrenal hyperplasia (CAH);

(i) Congenital hypothyroidism;

(j) Cystic fibrosis (CF);

(k) Galactosemia;

(l) Glutaric acidemia type I (GA I);

(m) Hb S/beta-thalassemia (Hb S/Th);

(n) Hb S/C disease (Hb S/C);

(o) Homocystinuria (HCY);

(p) Isovaleric acidemia (IVA);

(q) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCAD);

(r) Maple syrup urine disease (MSUD);

(s) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);

(t) Methylmalonic acidemia (Cbl A,B);

(u) Methylmalonic acidemia mutase deficiency (MUT);

(v) Multiple carboxylase deficiency (MCD);

(w) Phenylketonuria (PKU);

(x) Propionic acidemia (PA);

(y) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);

(z) Sickle cell disease;

(aa) Trifunctional protein deficiency (TFP);

(bb) Tyrosinemia type I (TYR I); and

(cc) Very long-chain acyl-CoA deficiency (VLCAD)

(2) Except as provided in KRS 214.155(2), the administrative officer, or other person in charge of the hospital or institution caring for newborn infants [twenty-eight (28) days or less of age], and the attending physician or midwife shall [have administered] to, or verify administration of tests to every infant in its care a blood test to detect inborn errors of metabolism or other inherited disorders identified in subsection (1) of this section prior to hospital discharge [phenylketonuria, galactosemia, sickle cell disease, and hypothyroidism]. If a baby is not born in a hospital or institution, the attending physician or midwife shall be [solely] responsible for ensuring that [causing] these tests are [to be] administered between twenty-four (24) and [at no less than] forty-eight (48) hours of age [or more than seven (7) days of life].

(3) [(2)] A capillary blood specimen shall be obtained from an [each] infant at discharge from [before he leaves] the hospital regardless of the age of the infant. Infants discharged prior to twenty-four (24) hours of age shall have a second screen submitted by a primary care physician or hospital prior to forty-eight (48) hours of life. Special circumstances for infants require that a specimen be obtained prior to a blood transfusion even if the specimen has to be drawn prior to twenty-four (24) hours of age. [All infants screened prior to forty-eight (48) hours of life shall be rescreened for phenylketonuria (PKU) and congenital hypothyroidism prior to three (3) weeks of life.]

(4) [(3)] If an infant is transferred from the birth [one (1)] hospital to another during the newborn hospital stay, the following rules shall apply:

(a) The sending hospital shall perform the newborn screening blood test, if the infant is twenty-four (24) [forty-eight (48)] hours of age or more at the time of transfer to another hospital [, testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism shall be the responsibility of the sending hospital].

(b) [It shall be the responsibility of] The receiving hospital shall [to] ensure the newborn screening blood test is performed [testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism] if the infant is less than twenty-four 24 [forty-eight (48)] hours of age at the time of transfer.

(5) Unless the infant has been tested in accordance with subsection (4) of this section, a hospital shall obtain [(4)] a capillary blood specimen at forty-eight (48) hours [shall be obtained on day seven (7)] of life from an infant who is [all infants that are] still hospitalized and ill, premature, or receiving parental feeding [on that day], for the purpose of newborn screening. [for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism, unless the infant has already been tested in accordance with subsection (3) of this section.

(5) A repeat capillary blood specimen shall be obtained from all infants who were being treated with antibiotics when the original specimen was obtained or within the previous five (5) days. This repeat specimen shall be obtained five (5) to seven (7) days after completing the antibiotic treatment for screening for phenylketonuria (PKU) and galactosemia.

(6) A repeat capillary blood specimen shall be obtained for screening for phenylketonuria (PKU) from all infants who received parental feeding prior to the initial screening. The specimen shall be obtained between forty-eight (48) and seventy-two (72) hours after initiation of feedings.]

(6) A hospital shall obtain [(7)] a repeat capillary blood specimen [shall be obtained] from an infant [all infants] who received a transfusion [transfusions] prior to the initial screening, according to the following schedule:

(a) [Forty-eight (48) to] Seventy-two (72) hours after transfusion rescreen inborn errors of metabolism and inherited disorders listed in Section 1(1) of this administrative regulation [for phenylketonuria (PKU) and congenital hypothyroidism].

(b) Sixty (60) [to sixty-five (65)] days after transfusion rescreen for galactosemia.

(c) Ninety (90) [120] days after transfusion rescreen for sickle cell disease.

(7) [(8)] Capillary blood specimens required in subsections (2) [(1)] through (6) of this section shall be obtained by a heel stick. Blood from the heel stick shall be applied directly to filter paper. All circles shall be saturated completely using a drop of blood per circle on a filter paper card. The specimen collector shall provide, on the filter paper card, information requested by the laboratory. If the screen has to be repeated due to lack of information on the filter paper card, the hospital or submitter shall find the newborn and shall be charged for repeating the newborn screening tests.

(8) [(9)] Specimens obtained [as directed] in accordance with subsections (2) [(1)] through (7) of this section, after allowing specimen to air dry for three (3) hours, shall be mailed or sent to the Department for Public Health [approved testing] laboratory within twenty-four (24) hours of collection of the specimen.

(9)(a) [(10)] Hospitals and institutions may submit blood specimens [samples] to the Cabinet for Health and Family Services [Human Resources], Department for Public Health [Services], Division of Laboratory Services, P.O. Box 2010 [100 Sower Boulevard, Suite 204], Frankfort, Kentucky 40602 [40621]. The Department for Public Health [Services], Division of Laboratory Services, shall report positive results of tests for inherited disorders and inborn errors of metabolism as required by KRS 214.155 on behalf of the hospitals and institutions.

(b) Hospitals and institutions may conduct their own testing program, within the institution or through a licensed medical laboratory. The cabinet shall be notified and the laboratory procedures approved. A hospital or licensed medical laboratory may be required by the cabinet to demonstrate its proficiency in the performance of tests.

(c) Hospitals and institutions which conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of testing to the attending physician and shall report positive test results to the Department for Public Health, Newborn Screening Program, [Services] no later than two (2) working days after the date of testing.

[(11) All hospitals that conduct their own testing for congenital hypothyroidism within the institution or through a licensed medical laboratory shall perform a TSH on the same blood samples whose initial T4 test resulted in a low value level.]

(10) [(12) All] Hospitals, physicians or practitioners which do their own testing or send their blood specimens to a licensed medical laboratory other than the Department for Public Health for testing shall complete monthly [semiannual or other] reports concerning newborn screening results and any other reports as [the testing] requested by the Division of Laboratory Services or the Division of Adult [Maternal] and Child Health Improvement.

(11) [(13)] The Cabinet for Health and Family Services shall [Human Resources may] share pertinent test results with specialty referral centers, physicians, [and] practitioners and [other than] the attending physician, who inform the cabinet that they are treating the infant who received the test, and may share with the local health department in the infant's county of residence. These specialty referral centers, physicians, and practitioners shall report results of diagnostic testing to the Department for Public Health. If a repeat screening test result has not been received by the cabinet in accordance with subsection 6 of this section within seven (7) days after notification to the primary care physician, the Department for Public Health shall notify the parents of the necessity for repeat screening.

(12) [(14)] Hospitals or other authorized institutions or individuals submitting blood specimens [samples] to the Cabinet for Health and Family Services [Human Resources] shall be billed a fee of fifty-three (53) dollars and fifty (50) cents for the newborn screening tests. [assessed for each test according to the following schedule:

PKU only	$2.50 per test
Galactosemia only	$2.50 per test
Hypothyroidism	$6.00 per test
Sickle cell disease only	$3.50 per test
Combination test for all four	$14.50]

(13) [(15) All] Fees due the Cabinet for Health and Family Services [Human Resources] shall be collected through a monthly billing system.

(14) In accordance with KRS 214.155, hospitals and free-standing birthing centers that are responsible for the collection of specimens for newborn screening shall:

(a) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance;

(b) Notify the Department for Public Health of the name of the individuals designated in subsection (a) of this section on a yearly basis and whenever the designated individual changes;

(c) Develop a written protocol for tracking newborn screening compliance. The protocol shall include a requirement that the name of the physician attending the infant after birth or a designee be placed on the filter paper specimen card sent with the initial specimen to the Department for Public Health laboratory; and

(d) Provide to parents educational materials developed by the Department for Public Health regarding newborn screening and made accessible on the Department for Public Health Web site.

WILLIAM J. HACKER, M.D. FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Fawbush

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes the cabinet to require infants to have a newborn screening blood test for 28 disorders and establishes a fee to cover the actual cost to the cabinet for the Newborn Screening Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement SB 24 which authorizes and funds the expansion of the newborn screening blood test program from the current 4 disorders to the 28 disorders to begin July 1, 2005.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 214.155 authorizes the cabinet to promulgate administrative regulations for operating a Newborn Screening Program for heritable disorders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary guidelines for the Newborn Screening Program by prescribing the time and manner of obtaining a specimen, reporting of results, and establishment of a fee.

(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 establishes new guidelines for specimen collection, new fees, and establishes a parent education component to the Newborn Screening Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish new testing procedures for an expanded number of conditions, as well as establishment of fees to support the program

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the times and manner of obtaining specimen, prescribes the manner of testing the specimen, reporting the results, and increases the current fee of $14 50 to $53.50 to support the Newborn Screening Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing an increased fee to support expanding the program from the current 4 disorders to 28 disorders and assures that screening of all newborns occurs in a timely fashion

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the Department for Public Health, university specialty clinics, birthing hospitals, primary care physicians, midwives, submitters of initial newborn screening tests, and parents.

(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 as follows:

(a) The Department for Public Health will have an increase in the number of infants requiring case management for short term follow-up and/or referrals to the universities;

(b) University specialty clinics will see an increase in referrals made to them for diagnosis and long-term treatment of the disorders detected;

(c) Birthing hospitals will have a newborn screening coordinator; and a protocol for assuring all newborns in their care receive a screening tests;

(d) Primary care physicians and midwives caring for newborns will be responsible for assuring newborn screening blood test performed;

(e) Submitters of initial newborn screening tests will see an increase in the fee charged;

(f) Parents will receive education materials regarding the newborn screening tests that are performed.

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

(a) Initially: 3.2 million

(b) On a continuing basis: 2.2 million

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds resulting from charging a fee to submitters for the newborn screening blood tests. Additionally in the first year master tobacco settlement funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will need to be an increase in the fee charged for the newborn screening blood test from $14.50 to $53.50.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation increases the fee charged for newborn screening blood testing.

(9) Tiering: Is tiering applied? Tiering of the fee increase will be not be applied with this administrative regulation, because the administrative regulation applies to all newborn infants across the state and applies equally to all entities across the state regulated by it. The fee increase will be $53.50 to purchase new equipment and reagents, train the hospital staff, and provide subspecialty consultations at the academic medical centers when potential cases are identified as the lab progressively expands the testing panel to 28 disorders.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2 State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect local government. The local health departments will have an increase in the fee charged for initial newborn screening tests performed.

3. State the aspect or service of local government to which this administrative regulation relates. Local Health Departments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): minimal

Expenditures (+/-): minimal There is minimal anticipated impact upon the revenues of local government due to the implementation of this administrative regulation. There will be few initial newborn screening tests performed in the local health departments. Only the infants born at home would possibly utilize local health department services. For calendar year 2004 there were 263 planned home deliveries

STATEMENT OF EMERGENCY
902 KAR 4:035E

This emergency administrative regulation is being promulgated as a result of 2005 GA SB 24 that expands the newborn screening program from the current four (4) disorders to twenty-eight (28) disorders which may require medical foods and formula as a treatment. This action must be taken on an emergency basis to provide the necessary guidelines for implementation of reimbursement for metabolic foods and formula for the expanded newborn screening effective July 1, 2005. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Emergency Amendment)

902 KAR 4:035E. Cost reimbursement for special food products [~~for the uninsured~~].

RELATES TO: KRS 205.560(1)(c), 213.141(2), 214.155(1), 304.17A-139, 7 C.F.R. Part 246, 42 U.S.C. 1786

STATUTORY AUTHORITY: KRS 194A.050(1), 205.560(1)(c), 214.155(1)

EFFECTIVE: July 15, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155(1) requires the cabinet to establish and collect fees to

cover the cost of analyzing testing samples for inborn metabolic errors KRS 213.141(2) requires the cabinet to prescribe a fee for a copy of a birth record, one (1) dollar of which shall be used by the Division of Adult [Maternal] and Child Health Improvement to pay for amino acid modified preparations and low-protein modified food products for the treatment of genetic and [inherited] metabolic diseases. This administrative regulation establishes the application and cost reimbursement procedures.

Section 1. Definition. (1) "Amino acid modified preparation" is defined at KRS 304.17A-139(4)(a)1.

(2) "Low protein modified food" is defined at KRS 304.17A-139(4)(a)2.

(3) "Patient" means a person with one (1) or more of the metabolic conditions listed in KRS 205 560 or 214 155.

(4) "Provider" means an individual or entity authorized to fill a prescription for an amino acid modified preparation or low protein modified food product.

(5) "Uninsured patient" means one who does not meet the criteria to receive Medicaid, K-CHIP, [or] WIC benefits, or [and] whose insurance coverage is exhausted.

(6) "WIC" means the Special Nutrition Program for Women, Infants, and Children administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246.

Section 2. Eligibility. (1) The cost of the formula for a patient who is eligible for WIC shall be covered by the WIC Program.

(2) The cost for food and formula for a patient covered by private health insurance shall be paid under the terms of the individual insurance policy, which shall meet or exceed the limit established in KRS 304.17A-139.

(3) An uninsured patient may qualify for financial assistance by submitting the following information and completed forms annually, [incorporated by reference,] to the Department for Public Health, Division of Adult and Child Health Improvement, 275 East Main Street HS 2GW-A, Frankfort, Kentucky 40621:

(a) Kentucky Metabolic Disease Program Physician's Statement of Medical Necessity - Metabolic Disease Therapy form;

(b) Kentucky Metabolic Food and Formula Provision Financial and Release of Information Form; and

(c) Written verification that application for WIC, Medicaid, or K-CHIP was denied, and that private health insurance has been exhausted.

Section 3. Cost Reimbursement. To receive reimbursement of the actual cost plus twenty (20) percent, a provider shall submit the following documents to the Department for Public Health, Division of Adult and Child Health Improvement:

(1) A prescription for the metabolic food and formula from a licensed or certified healthcare practitioner with prescriptive authority; [and]

(2) A completed Division of Adult and Child Health, Authorization for Services, Form ACH 233, and

(3) An invoice from the supplier with the service date, patient name, and cost to the provider. [, incorporated by reference.]

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

(a) "Kentucky Metabolic Disease Program Physician's Statement of Medical Necessity - Metabolic Disease Therapy, 5/2001";

(b) "Division of Adult and Child Health Authorization for Services, Form ACH 233, 10/00 [6/2001]"; and

(c) "Kentucky Metabolic Food and Formula Provision Financial and Release of Information Form, 12/2004 [6/2001]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Adult and Child Health Improvement, 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
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 11 a m
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Sandy Fawbush or Troi Cunningham

(1) Provide a bnef summary of:

(a) What this administrative regulation does: This administrative regulation establishes the disorders that require special medical food or formula and the guidelines for the Department for Public Health to reimburse for these conditions.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to allow coverage of metabolic food products or formula as part of treatment for genetic and metabolic disorders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 214.155 authorizes the cabinet to promulgate administrative regulations for operating a newborn screening program for heritable disorders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary guidelines for reimbursement of metabolic formula or medical food products by the Newborn Screening Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation only by adding the expanded disorders to the list of disorders that require special medical food or formula and modifies reimbursement guidelines for the Department for Public Health to reimburse for these conditions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand the list of disorders covered by this reimbursement as mandated by 2005 GA SB 24.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by expanding the disorders reimbursable by the Department for Public Health's Newborn Screening Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for coverage of the additional disorders that will be identified through the expanded newborn screening.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the Department for Public Health, university specialty clinics, patients, durable medical equipment providers, and pharmacy providers.

(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 as follows:

(a) The Department for Public Health may have an increase in the number of uninsured patients that are prescribed medical food products or formula.

(b) University specialty clinics may have an increase in the number of uninsured patients that require assistance in completing forms for the Department for Public Health to reimburse providers for medical food products and formula.

(c) Durable medical equipment and pharmacy providers will provide reimbursement guidelines for the disorders identified through newborn screening.

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

(a) Initially: Budget neutral.

(b) On a continuing basis: Same

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

source of funding to be used for implementing this administrative regulation is the $1 fee that is charged with the birth certificate fee to be used for medical food products and formula.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish nor indirectly increases the fee charged for the birth certificate.

(9) Tiering: Is tiering applied? Tiering of the fee increase will be not be applied with this administrative regulation, because the administrative regulation applies to all newborn infants across the state and applies equally to all entities across the state regulated by it.

STATEMENT OF EMERGENCY
907 KAR 1:022E

This emergency administrative regulation is being promulgated to reduce the allowed amount of bed reserve days and establish bed reserve payment rates based on occupancy percentage. This action must be enacted on an emergency basis in order to maintain the financial 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 identical ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:022E. Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

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

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558 [, ~~EO 2004-726~~]

EFFECTIVE: July 1, 2005

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 provisions relating to nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services 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" or "ICF-MR-DD" means a licensed intermediate care facility for individuals with mental retardation or a developmental disability certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for individuals with mental retardation or a developmental disability.

(5) "Intermediate care facility for individuals with mental retardation or a developmental disability 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.

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

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

(a) A facility:

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

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

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

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

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

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

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

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

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

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

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

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 6 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 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 criteria if the services are provided in a Medicaid participating 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) An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Patient Status. A patient status decision shall be based on medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or non-institutional services.

(1) For an admission and continued stay, an individual shall qualify 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

(a) On a daily basis:

1. The individual's needs mandate:

a. High-intensity nursing care services; or

b. High-intensity rehabilitation 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 care needs in the following areas:

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

2. Nasogastric or gastrostomy tube feedings,

3. Nasopharyngeal and tracheotomy aspiration;

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

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

6. Bladder irrigations in relation to previously indicated stipulation,

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

8. Sterile dressings;

9 Changes in bed position to maintain proper body alignment;

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

11 Receiving medication recently initiated, which requires high-intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

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;

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; or

(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;

11. 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

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) 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 meeting 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; or

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

(5) An individual shall meet ICF-MR-DD patient status if the individual requires physical or environmental management or 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 if:

1. The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for individuals with mental retardation or a developmental disability); and

3. The individual does not require psychiatric inpatient treatment;

(6) 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.

(7) 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.

(8) Excluding an individual with 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.

(9) Transfer trauma criteria. A Medicaid recipient in an NF who does not meet the low-intensity or high-intensity nursing care patient status criteria established in this section shall not be discharged from an NF if

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

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

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

(10) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (9) of this section:

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

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

(11) The recipient transfer trauma criteria established in subsection (9) of this section shall not apply to an individual who resides in a facility which experiences closure or a license or certificate revocation

Section 5. 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 of this administrative regulation.

(2) An individual's patient status shall be reevaluated at least once every six (6) months.

(3) 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 the reevaluation is finalized, payment shall no longer be appropriate in the facility.

Section 6. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury and meets the high-intensity nursing care patient status criteria established in Section 4 of this administrative regulation or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

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

(a) Central nervous system injury from physical trauma;

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

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

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

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

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

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

(d) The individual requires coma management; or

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

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

(a) The presenting problem;

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

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

(d) The services needed.

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

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

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

(c) Progressive dementia or other mentally impairing condition,

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

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

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

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

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

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

(c) 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. 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 established in Section 4(2) of this administrative regulation shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Medicaid Nursing Facility Services Manual.

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

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

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

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

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

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

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

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

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

1. Requires:

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

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

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

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

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

c. The individual requires twenty-four (24) hours per day high-intensity 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 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. Denial of Patient Status. 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. Reserved Bed Days. The department shall cover and reimburse for reserved bed days as follows: [~~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) Covered for a maximum of fourteen (14) days per calendar year [~~temporary absence~~] due to hospitalization; [~~, with an overall maximum of forty-five (45) days during a calendar year; and~~]

(b) Covered for a maximum of ten (10) days per [~~Fifteen (15) days during a~~] calendar year for leaves of absence other than hospitalization;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent.

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

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

Section 11. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, July 2005 [~~October 2004~~] edition, is incorporated by reference.

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

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502-564-6204)

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by establishing the provisions relating to NF and ICF-MR-DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically-needy and medically-needy recipients.

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

(a) How the amendment will change this existing administrative regulation. The amendment to this administrative regulation reduces the allowed amount of bed reserve days and establish bed reserve payment rates based on occupancy percentage..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to maintain the financial viability of the Medicaid
Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses bed reserve policy as authorized in order to maintain the financial viability of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist DMS in the effective administration of the authorizing statutes reducing the allowed amount of bed reserve days in order to maintain the financial viability of the Medicaid Program.

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

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation reduces the allowed amount of reserved bed days and establishes bed reserve payment rates based on occupancy percentage.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation will decrease expenditures by approximately $9.0 million ($6.2 million federal funds; $2.8 million state funds) for state fiscal year (SFY) 2006.

(b) On a continuing basis: DMS is unable to determine the future savings resulting from the amendment; however, DMS anticipates the savings will continue if not grow.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et seq.

2 State compliance standards. This administrative regulation reduces the amount of allowed bed reserve days.

3 Minimum or uniform standards contained in the federal mandate This administrative regulation reduces the amount of allowed bed reserve days.

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

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

STATEMENT OF EMERGENCY
907 KAR 1:031E

This emergency administrative regulation, which increases home health service rates by five (5) percent for state fiscal year 2006, must be enacted on an emergency basis in order to comply with HB 267 of the 2005 Session of the GA. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:031E. Payments for home health services.

RELATES TO. 42 C.F R. 440.70, 447.325, 42 U.S.C. 1396a-d, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205 520(3)[, ~~EO 2004-726~~]

EFFECTIVE: July 1, 2005

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 Kentucky 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 home health agency services that are provided to Kentucky's Medicaid-eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.

(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.

(3) "Cost report Instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.70(d).

(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable cost of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.

(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:

(a) Each Medicare participating provider;

(b) Each category of service; and

(c) A unit of service

(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of the HHA, the facility would have had to employ another person to perform the service

(11) "Owner" means a person or a related family member with a cumulative ownership interest of five (5) percent or more.

(12) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.

(13) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.

(14) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.

(15) "Related family member" means:

(a) Husband or wife;

(b) Natural or adoptive parent, child, or sibling;

(c) Stepparent, stepchild, stepbrother, stepsister;

(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(e) Grandparent or grandchild;

(f) Spouse of grandparent or grandchild;

(g) Aunt or uncle; or

(h) Spouse of aunt or uncle.

(16) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.

(17) "Uniform desk review" or "UDR" means an analysis of a provider's Annual Medicaid Home Health/HCB Cost Report to determine if the data is adequate, complete, accurate, and reasonable.

(18) "Usual and customary charge" means the uniform amount which a medical provider charges the general public for a specific service or procedure.

Section 2. Reimbursement Requirement. A home health service shall be provided in accordance with 907 KAR 1:030 to be eligible for reimbursement.

Section 3. Payment to an In-state HHA. (1) Except as provided in Section 15 of this administrative regulation, the department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:

(a) Speech therapy;

(b) Physical therapy;

(c) Occupational therapy;

(d) Medical social services;

(e) Home health aide services; and

(f) Skilled nursing services.

(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:

(a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;

(b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;

(c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:

1. Trending the total cost data to the beginning of a rate year; and

2. Indexing cost data established pursuant to subparagraph 1

of this paragraph for inflationary cost increases projected to occur during the rate year;

(d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)2 of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection,

(e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection,

(f) The interim rate for a publicly-operated HHA shall be the lesser of:

1. The average unit cost pursuant to paragraph (d) of this subsection; or

2. The Medicare upper limit as issued to the provider through a Medicare letter; and

(g) The interim rate for a nonpublicly-operated HHA shall be the lesser of the:

1. Maximum average unit cost as established pursuant to paragraph (d) or (e) of this subsection that the provider is eligible to receive;

2. Medicaid upper limit pursuant to Section 7 of this administrative regulation; or

3. Medicare upper limits.

(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:

(a) Disposable medical supplies; and

(b) Enteral nutritional products.

(4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:

(a) Settled To the lesser of the:

1. Allowable Medicaid cost, as established in an HHA cost report that the department has:

a. Audited; or

b. Desk reviewed; or

2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a)1 of this subsection; and

(b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions.

(5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:

(a) Settled to the lesser of the:

1. Allowable Medicaid cost, as established by the Kentucky Medicaid Medical Supply Cost Settlement Worksheet, that the department has:

a. Audited; or

b. Desk reviewed; or

2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a)1 of this subsection; and

(b) Settled utilizing aggregation of costs in accordance with the Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions.

(6)(a) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2.

(b) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.

(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation

(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:

(a) Considered a new HHA; and

(b) Reimbursed at the interim rate equal to the lesser of:

1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 7(2)(e) of this administrative regulation; or

2. The current Medicare upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:

(a) Submitted pursuant to Section 8 of this administrative regulation; and

(b) Received by the department by May 31 preceding the rate year.

(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department shall grant a rate change if the provider:

(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and

(b) Submits a projected cost report.

(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4) or (5) of this administrative regulation.

Section 5. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 7 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 3(2)(e) of this administrative regulation, in accordance with the following payment schedule:

INCENTIVE PAYMENT SCHEDULE	
PERCENTAGE OF PER UNIT COST TO UPPER LIMIT	INCENTIVE PAYMENT PER VISIT AMOUNT
95.01% - 100%	–
90.01% - 95%	$1.00
85.01% - 90%	$1.50
80.01% - 85%	$2.00
80% and below	$2.50

(2) An incentive payment shall:

(a) Be subject to verification of visits;

(b) Bear an inverse relationship to the current year basic per visit cost; and

(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.

(3) The portion of an interim rate equal to the "incentive payment per visit amount" shall not be subject to retrospective settlement pursuant to Section 3(4) or (5) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.

(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Com-

monwealth of Kentucky shall be reimbursed the lesser of the agency's:

(a) Usual and customary billed charge;

(b) Medicare upper limit; or

(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:

(a) Disposable medical supplies; and

(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:

(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:

1. Urban; or

2. Rural.

(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.

(c) Each HHA's average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:

1. Grouped pursuant to paragraph (b) of this subsection; and

2. Arrayed from lowest to highest.

(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.

(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(3) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:

(a) A publicly-operated HHA; or

(b) A new HHA who does not have two (2) full years of operation.

(4) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 6(2) of this administrative regulation, an HHA shall submit to the department a completed cost report:

(a) That includes workpapers utilized to prepare the cost report including:

1. Detail of how a reclassification or an adjustment was calculated;

2. A working trial balance; and

3. Schedules tying the trial balance to the cost report;

(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;

(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions; and

(d) Pursuant to 42 C.F.R. 413.24(a), (b), (c), and (e).

(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:

(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control;

(b) The provider submits a request for the extension in writing; and

(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.

(3) An HHA's payment shall be suspended if:

(a)1. Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed, and

2. A cost report has not been submitted to the department.

(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or

(c) The provider fails to provide the department with access to records pursuant to:

1. 907 KAR 1:672, Section 2(6), or

2. Subsection (4) of this section.

(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:

(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d), and

(b) Documentation of work or services performed if compensation is claimed by the:

1. Owner; or

2. A related family member of the:

a. Owner; or

b. Administrator.

(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.

(6) If the department is denied access to a subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.

(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:

(a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:

1. Beginning with the first day of the provider's fiscal year immediately preceding the provider's termination date; and

2. Ending on the date of termination of its provider agreement with the Medicaid Program; and

(b) A final settlement pursuant to Section 3(4) or (5) of this administrative regulation is completed by the department.

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:

(a) Reflective of a provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(2) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:

(a) Allowable cost to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98; and

(f) Therapy and other services pursuant to 42 C.F.R. 413.106.

Section 10. Limitations on Allowable HHA Cost. (1) Board of directors' fees.

(a) The cost of board of director's fees shall be limited annually to:

1.a. Five (5) meetings for a single-facility organization; or

b. Twelve (12) meetings for a multiple-facility organization; and

2. $200 for each director of the board attending each meeting, including the cost of attending the meeting.

(b) The cost associated with a private club membership shall not be an allowable cost

(2) Motor vehicles

(a) An allowable motor vehicle cost shall be.

1. Limited to cost related to patient care; and

2. Documented sufficiently to support business use

(b) An allowable cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the federal income tax mileage allowance.

(c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:

1. Included in the employee's W-2 statement, or

2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.

(d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:

1. Compensation to an owner does not exceed the owner's compensation limits pursuant to Section 11 of this administrative regulation; and

2. The total compensation package to a nonowner is reasonable pursuant to 42 C.F.R. 413 9(b)

(3) The cost associated with political contributions shall not be allowable.

(4) The following legal fees shall not be allowable costs:

(a) A legal fee associated with unsuccessful lawsuits against the Cabinet for Health and Family Services or the department;

(b) A legal fee incurred by the provider in an attempt to block the approval of a certificate of need for another provider;

(c) A legal fee associated with the acquisition of another HHA;

(d) A legal fee resulting from the commission of an illegal act by an:

1. HHA;

2. HHA's owner; or

3. HHA's agent, or

(e) A legal fee unrelated to patient care.

(5) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:

1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;

2. Agreed to by involved parties; or

3. As ordered by the court.

(6) Travel expenses. The cost of travel expenses shall be limited to

(a) Activities related to the educational needs of the:

1. Agency owners;

2. Directors; or

3. Staff;

(b) Reasonable and necessary cost pursuant to 42 C.F.R. 413.9(b) as determined in evaluating the:

1. Number of trips taken,

2. Expense associated with each trip;

3. Number of persons attending each function; and

4. Appropriateness of the training; and

(c) Trips taken within the forty-eight (48) contiguous United States.

Section 11. Owner's Compensation Limits. (1) Compensation to an owner who is not an administrator shall:

(a) Be considered an allowable cost pursuant to 42 C.F.R. 413.102; and

(b) Exclude:

1. Board of directors' fees; and

2. Fringe benefits routinely provided to all employees.

(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.

(3) A full-time owner-administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:

(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:

1. The owner's proof of performance of a necessary function; and

2. Documentation of time claimed for compensation, and

(b) A salary from the agency with which the person is primarily associated.

(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.

(5) Compensation to an owner-administrator of a rural or urban HHA shall be:

(a) Limited to $60,579 beginning July 1, 1999;

(b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor's, Inc.; and

(c) Published annually through a notification to all providers to advise of the revised limits for owner's compensation to be effective July 1 of each year.

Section 12. Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:

(a) Review or audit by the department; and

(b) A final retroactive settlement based upon an adjustment to an HHA provider's costs reported in a cost report for any reporting period under review or audit.

(2) The department shall perform a uniform desk review (UDR) of each provider's annual cost report.

(3) A summary of the UDR shall be used:

(a) To settle the cost report without audit; or

(b) To determine the extent to which audit verification is required.

(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the "Government Auditing Standards".

Section 13. Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect until July 1, 2002.

Section 14. Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1 030 at the lesser of:

(1) The provider's usual and customary charge; or

(2) The Medicaid fixed upper payment limit per unit of service as established in Section 15 of this administrative regulation.

Section 15. Fixed Upper Payment Limits ~~[Effective July 1, 2002]~~. (1) Except for state fiscal year 2006, the following rates shall be the fixed upper payment limits for home health services:

Service	Fixed Upper Payment Limit
Skilled Nursing	$83.00 per visit
Home Health Aide	$32.50 per visit
Speech Therapy	$81.00 per visit
Physical Therapy	$81.00 per visit
Occupational Therapy	$81.00 per visit
Medical Social Service	$65 00 per visit

(2) For state fiscal year 2006, the above-listed rates shall be increased by five (5) percent and be the home health service upper payment limits. The increased upper payment limits shall sunset at close of business June 30, 2006 and be reduced by five (5) percent effective July 1, 2006.

Section 16. Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:

(a) Payments received for services on or after November 1, 2002 in accordance with Section 15 of this administrative regulation; and

(b) The estimated cost of providing services during the same

time period.

(2) Based on a provider's most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.

(3) If a provider's cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 15 of this administrative regulation, the department shall recoup any excess payments.

Section 17. Reimbursement Review and Appeal An HHA may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1.671, Sections 8 and 9.

Section 18. Incorporation by Reference (1) The following material is incorporated by reference:

(a) The "Annual Medicaid Home Health/HCB Cost Report", Department for Medicaid Services, May 1991 edition,

(b) "The Annual Medicaid Home Health/HCB Cost Report Instructions", Department for Medicaid Services, May 1991 edition;

(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;

(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition; and

(e) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions", Department for Medicaid Services, June 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.

JAMES W. HOLSINGER, JR., MD, Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner

APPROVED: June 30, 2005

FILED WITH LRC: July 1, 2005 at 8 a.m.

CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home health services.

(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 reimbursement methodology for home health services.

(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 statutes by establishing the reimbursement methodology for home health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases home health service rates by 5%.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with 2005 GA HB 267.

(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 increasing home health service rates by 5% as mandated by 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes The amendment to this administrative regulation assists in the effective administration of the statutes by increasing home health service rates by 5% as mandated 2005 GA HB 267

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation. This administrative regulation will affect all home health service providers enrolled in the Home Health Service 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. Beginning September 1, 2003, the department will make additional payment to a local county health department home health agency equal to the difference between payments received for services on or after November 1, 2002. Supplemental payments shall be based on data from the most recently submitted annual cost report. Also, home health providers will be impacted as they will complete a "Medicaid Medical Supply Cost Settlement Worksheet" for FYE June 30, 2003 and submit along with the worksheet their Medicare cost report.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment to this administrative regulation will increase expenditures by approximately $3 million ($2 08 million federal funds; $0.92 million state funds) in SFY 2006.

(b) On a continuing basis: The home health service rate increased is mandated for the second year of the biennium budget which expires June 30, 2006.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to 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: DMS estimates that the amendment to this administrative regulation will increase expenditures by approximately $3 million ($2.08 million federal funds; $0.92 million state funds) in SFY 2006; thus, an increase in funding is needed

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY
907 KAR 1:045E

This emergency administrative regulation is being promulgated to establish, effective July 1, 2005, that the community mental health center services reimbursement rates in effect on June 30, 2002 through June 30, 2005 shall continue to remain in effect throughout state fiscal year (SFY) 2006. The Department for Medicaid Services (DMS) is maintaining the SFY 2006 rate for community mental health center services at the SFY 2002 rate to maintain the financial 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 identical ordinary administrative regulation filed with

the Regulations Compiler.

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

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

907 KAR 1:045E. Payments for community mental health center services.

RELATES TO KRS 205.520(3), 210.370 [~~, EO 2004-444~~]
STATUTORY AUTHORITY. KRS 194A.030(2), 194A 050(1), 42 C.F.R. 447.325, 42 U.S C. 1396a-d
EFFECTIVE: July 1, 2005
NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-444, effective May 11, 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 program of Medical Assistance. 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 community mental health center services.

Section 1. Community Mental Health Centers. Participating in-state community mental health centers shall be reimbursed as follows:

(1) Effective July 1, 2005 [~~2004~~] the payment rate that was in effect on June 30, 2002, for community mental health center services shall remain in effect throughout state fiscal year (SFY) 2006 [~~2005~~] and there shall be no cost settling.

(2) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

Section 2. Implementation of Payment System. (1) Payments shall be based on units of service. One (1) unit for each service shall be defined as follows:

Service	Unit of Service
Inpatient Service	15 minutes
Individual Therapy	15 minutes
Group Therapy	15 minutes
Family Therapy	15 minutes
Collateral Therapy	15 minutes
Intensive In-Home Therapy	15 minutes
Home Visit Service	15 minutes
Emergency Service	15 minutes
Personal Care Home	15 minutes
Evaluations, Examinations, and Testing	15 minutes
Therapeutic Rehabilitation for Children	1 hour
Therapeutic Rehabilitation for Adults	1 hour
Chemotherapy Service	15 minutes
Physical Examinations	15 minutes

(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.

(3) Except for an initial unit of a service, a service that is:

(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

(4) An individual provider shall not exceed four (4) units of service in one (1) hour.

(5) Overpayments discovered as a result of audits shall be settled through recoupment or withholding.

(6) The vendor shall complete an annual cost report on forms provided by the cabinet (and included in Community Mental Health-Mental Retardation Reimbursement Manual) not later than ninety (90) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(7) Each community mental health center shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(8) Payments due a community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1.044, mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the "Community Mental Health - Mental Retardation Reimbursement Manual".

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating out-of-state community mental health centers shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

Section 5. Appeal Rights. A provider may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) The "Community Mental Health - Mental Retardation Reimbursement Manual, July 2005 [~~2004~~] edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for community mental health center services.

(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 reimbursement methodology for community mental health center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for community mental health center services

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

(a) How the amendment will change this existing administrative regulation. This administrative regulation is being amended to establish effective July 1, 2005, that the reimbursement rate for community mental health center services in effect on June 30, 2002 shall remain in effect throughout state fiscal year (SFY) 2006.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain the financial viability of the Medicaid program

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing community mental health center service reimbursement for SFY 2006.

(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 establishing community mental health center service reimbursement for SFY 2006.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 14 community mental health centers providing services.

(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: Community mental health service providers will continue to receive throughout SFY 2006 the rate in effect as of June 30, 2002.

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

(a) Initially: Implementing this administrative regulation will not generate any additional costs to the Department for Medicaid Services (DMS) given that it continues a prior rate freeze into SFY 2005.

(b) On a continuing basis: Implementing this administrative regulation will not generate any additional costs to the Department for Medicaid Services (DMS) given that it continues a prior rate freeze into SFY 2005.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to 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: The amendment to this administrative regulation does not increase any fee nor does it require any additional funding.

(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 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 administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY
907 KAR 1:061E

The Department for Medicaid Services is promulgating this emergency administrative regulation to increase base rates and mileage allowance rates for ambulance transportation services. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a)3 to comply with HB 267 of the 2005 Session of the GA. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation concurrently filed with the Regulations Compiler.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Emergency Amendment)

907 KAR 1:061E. Payments for ambulance [~~medical~~] transportation.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396, 440.170, 447.200-447.205, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, ~~EO 2004-726~~]

EFFECTIVE: July 1, 2005

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 Department for Medicaid Services for ambulance [~~medical~~] transportation services.

Section 1. Definitions. (1) "Advanced life support (ALS) emergency ambulance transportation" means an ambulance service meeting the standards for advanced life support services established in accordance with 202 KAR 7:580 and 7:584.

(2) "Advanced Life Support (ALS) Medical First Response Provider" means an emergency medical professional licensed in accordance with 202 KAR 7:595 to provide ALS care.

(3) "Air ambulance provider" means an air ambulance service licensed in accordance with 202 KAR 7:510 and 7:590.

(4) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care if a hospital emergency room is not located within a recipient's county of residence or a contiguous county.

(5) "Basic life support (BLS) emergency ambulance transportation" means an ambulance service which meets the standards for basic life support services established in 202 KAR 7:580 and 7:582.

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

(7) "Membership or subscription fee" means a payment collected from a recipient by a provider which entitles the recipient to free or discounted ambulance transportation services.

(8) "Recipient" is defined in KRS 205.8451(9).

(9) "Upper limit" means the maximum reimbursement rate the department shall pay an ambulance transportation provider for the service provided.

Section 2. Reimbursement for Licensed Ambulance Services. (1) The department shall reimburse an ambulance service at the lesser of:

(a) The provider's usual and customary charge for the service; or

(b) An upper limit established by the department for the service.

(2) Except for an air ambulance transportation service, the upper limit for an ambulance service shall be calculated by adding a base rate, mileage allowance, and flat rate fees as follows:

(a) For ALS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of 100 dollars;

2. A mileage allowance of four (4) dollars per mile, and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(b) For BLS emergency ambulance transportation to the emergency room of a hospital

1. A base rate of seventy-five (75) dollars;

2. A mileage allowance of three (3) dollars per mile; and

3. If transported concurrently, a flat rate of twenty (20) dollars for an additional recipient;

(c) For ALS or BLS emergency ambulance transportation to an appropriate medical facility or provider other than the emergency room of a hospital

1. A base rate of fifty-five (55) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient;

(d) For BLS emergency ambulance transportation to the emergency room of a hospital during which the services of an ALS Medical First Response provider is required to stabilize the recipient;

1. A base rate of 100 dollars;

2. A mileage allowance of four (4) dollars per mile; and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient,

(e) For BLS emergency ambulance transportation to a medical facility or provider other than the emergency room of a hospital during which the services of an ALS Medical First Response provider are required:

1. A base rate of fifty-five (55) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient; and

(f) For non emergency ambulance transportation during which the recipient requires no medical care during transport:

1. A base rate of fifty (50) dollars; and

2. A mileage allowance of two (2) dollars per mile.

(3) In addition to rates specified in subsection (2), administration of oxygen during an ambulance transportation service shall be reimbursed at a flat rate of ten (10) dollars per one (1) way trip when medically necessary.

(4) Reimbursement for air ambulance transportation shall be an all inclusive rate which shall be the lesser of:

(a) The provider's usual and customary charge; or

(b) An upper limit of $3,500 per one (1) way trip.

(5) Payment for a service identified in subsections (2) through (4) of this section shall be contingent upon a statement of medical necessity which:

(a) Shall be maintained in accordance with 907 KAR 1:060, Section 5(2); and

(b) May be requested by the department for post-payment review.

(6) If a recipient has paid a membership or subscription fee to a transportation provider in order to access free or discounted ambulance transportation service, the provider shall not be eligible for Medicaid reimbursement for service provided to the recipient.

Section 3. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671. ~~["Advanced life support (ALS) ambulance services" means ambulance services meeting the standards for advanced life support services established in accordance with 902 KAR 14:070, 907 KAR 14:080, 907 KAR 14:082, and 907 KAR 14:084.~~

~~(2) "Advanced Life Support (ALS) Medical First Response Providers" means the utilization of certified and licensed emergency medical professionals in accordance with 902 KAR 14:100 to provide advanced prehospital medical care.~~

~~(3) "Affiliate ambulance service" means a Class I ground ambulance provider who has entered into a formal written agreement with an ALS medical first response provider to jointly respond to prehospital medical emergencies for coordinated medical care and transportation. "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services, if provided by a Medicaid provider licensed for the provision of air ambulance services in accordance with 902 KAR 14:090.~~

~~(4) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services, if provided by a Medicaid provider licensed for the provision of air ambulance services in accordance with 902 KAR 14:090.~~

~~(5) "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.~~

~~(6) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.~~

~~(7) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who accompanies a minor child shall be considered to be an attendant.~~

~~(8) "Basic life support (BLS) emergency ambulance transportation services" means ambulance services meeting the standards for basic life support services established in 902 KAR 14:080 if provided by a Medicaid provider appropriately licensed for the provision of BLS services in accordance with 902 KAR 14:080, 907 KAR 14:082 and 907 KAR 14:084.~~

~~(9) "Commercial transportation carrier" means a commercial carrier which:~~

~~(a) Is licensed in accordance with KRS 281A.010(8), other states, or of the United States to transport members of the general public; and~~

~~(b) Has the authority provided by the Transportation Cabinet to operate in the county in which the transportation services is initiated.~~

~~(10) "Department" means the Department for Medicaid Services.~~

~~(11) "Loaded miles" means the miles in which the transportation carrier is transporting at least one (1) recipient to or from a Medicaid covered service.~~

~~(12) "Medical condition" means a condition of the recipient which does not allow him to travel alone or without physical assistance.~~

~~(13) "Membership or subscription fee" means a charge from the provider to the recipient which entitles the recipient to free or discounted ambulance transportation services.~~

~~(14) "Noncommercial group carrier" means a vendor licensed in accordance with KRS 281.619, who provides bus or bus type medical transportation to an identifiable segment of the eligible recipient group, but not including a vendor whose transportation costs are allowable costs under their reimbursement system (except community mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:~~

~~(a) Community action agencies (or successor agencies) providing bus or bus type~~
~~service for a poverty or near poverty area target population; and~~
~~(b) Other similar providers as identified by the department.~~

~~(15) "Nonemergency health transportation services (NEHT)" means transportation services provided by a Medicaid provider meeting the standards for nonemergency health transportation services; and licensed in accordance with 902 KAR 14:060 and 902 KAR 14:070.~~

~~(16) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients.~~

~~(17) "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.~~

(18) "Specialty carrier" means a vendor who

(a) Provides, through specially equipped vehicles, medical transportation for nonambulatory recipients, or for ambulatory but disoriented recipients;

(b) Provides services not available from other transportation vendors; and

(c) Has a disabled persons certificate in accordance with KRS 281.014(5) with approval by the department for reimbursement at specialty carrier rates and is licensed appropriately in accordance with KRS Chapter 281.

(19) "Upper limit" means the maximum reimbursement rate that the department shall pay the transportation provider for the services provided.

Section 2. Licensed Ambulance Services Reimbursement.

(1) The department shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department.

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies, as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital shall be set at eighty-five (85) dollars per one (1) way trip; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty-five (25) dollars shall be set for an additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of $3,500. A claim for air ambulance transportation services shall be submitted to the department and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at sixty-five (65) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for an additional recipient with no additional allowance for mileage.

(d) The base rate for an ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at fifty-five (55) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1), a flat rate of fifteen (15) dollars shall be set for an additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the department. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services if transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services if transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for a licensed ambulance service if no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) An oxygen rate, which is set at ten (10) dollars per one (1) way trip; for a licensed ambulance service, excluding air ambulances.

(h) The cost of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the department.

(i) The base rate for BLS emergency transportation with an ALS medical first response provider to stabilize the patient before the BLS run is completed to the emergency room of a hospital, shall be:

1. Eighty-five (85) dollars per one (1) way trip;

2. Two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); and

3. Flat rate of twenty-five (25) dollars for an additional recipient with no additional allowance for mileage.

(j) The base rate for BLS providing emergency transportation with ALS medical response provider assistance to medical facility or provider which is not the emergency room of a hospital shall be:

1. Fifty-five (55) dollars per one (1) way trip;

2. Two (2) dollars per mile from mile one (1), and

3. Flat rate of fifteen (15) dollars for an additional recipient with no additional rate for mileage.

(k) Payment for services identified in paragraphs (i) or (j) of this subsection shall be contingent upon review of required documentation by the department. Required documentation shall be a statement of medical emergency by the attending medical provider and ALS medical first response provider.

(3) The department shall not reimburse a licensed participating ambulance service provider who charges a membership or subscription fee that entitles the recipient to free or discounted ambulance transportation if a recipient has paid that membership or subscription fee.

Section 3. Commercial Transportation Carrier Reimbursement. The department shall reimburse a participating commercial transportation carrier at usual commercial rates with limitations as follows:

(1) For taxi services provided in regulated areas in accordance with KRS 281.635(4), the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area as defined in 907 KAR 1:060, and

(2) For a taxi service in an area of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for taxi services in regulated areas when they go outside the medical service area as defined in 907 KAR 1:060, the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger, up to the upper limit. The upper limit for a taxi transporting a recipient shall be:

(a) The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles;

(b) The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles;

(c) The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty five (25) miles, one (1) way, loaded miles;

(d) The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles; or

(e) For trips of fifty one (51) miles or above, the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles; and

(f) Inclusive of the cost for transporting a parent or attendant

Section 4. Private Automobile Carrier Reimbursement.

(1) The department shall reimburse private automobile carriers the minimum rate per mile paid to state employees in accordance with 200 KAR 2:006.

(2) A private automobile carrier shall have a signed participation agreement with the department prior to furnishing a reimbursable medical transportation service and provide proof of a current driver's license and minimum state required insurance coverage.

(3) Toll charges shall be reimbursable if presented with a receipt.

(4) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized.

Section 5. Noncommercial Group Carriers. The department

~~shall reimburse a participating noncommercial group carrier for actual reasonable, allowable costs to the provider based on cost data submitted to the department by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the recipient rate.~~

~~Section 6. Specialty Carriers.~~

~~(1) Participating specialty carriers shall be reimbursed at the lesser of the following rates:~~

~~(a) The actual charge for the service, or~~

~~(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the department, or~~

~~(c) The program maximum established for the service.~~

~~(2) Program maximums shall be:~~

~~(a) For nonambulatory recipients who require the use of a wheelchair, the upper limit shall be twenty five (25) dollars for the first recipient plus four (4) dollars for each additional recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.~~

~~(b) For ambulatory recipients who are disoriented, the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.~~

~~(c) For paragraphs (a) and (b) of this subsection, empty vehicle miles shall not be included when computing allowable reimbursement for mileage.~~

~~(3) Reimbursement shall be made at specialty carrier rates for the following types of recipients only:~~

~~(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include recipients who need to be transported as stretcher patients; and~~

~~(b) Ambulatory recipients who are disoriented and require an attendant as authorized by a physician.~~

~~(4) The recipient or guardian shall obtain a statement from the recipient's physician (or, if the recipient is in a nursing facility, from the director of nursing, charge nurse, or medical director in lieu of a physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.~~

~~Section 7. Specially authorized transportation services authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service. The amount allowed shall not exceed the usual and customary charge of the provider. The department shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.~~

~~Section 8. Use of Flat Rates. Transportation payment shall not exceed the lesser of:~~

~~(1) Six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip); or~~

~~(2) The usual fee for the participating transportation provider computed in the usual manner, if:~~

~~(a) The recipient chooses to use a medical provider outside the medical service area as (defined in 907 KAR 1:060);~~

~~(b) The medical service is available in the recipient's medical service area; and~~

~~(c) The recipient has not been appropriately referred by the medical provider within his medical service area.~~

~~Section 9. Posting of Rates. A transportation provider, except a private auto provider, shall be allowed to post his rates with the Department for Community Based Services offices in the counties they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised once per quarter. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.~~

~~Section 10. Meals and Lodging. The flat rate for meals and lodgings for a recipient or attendant if preauthorized (or postauthorized, if appropriate) by the department shall be reimbursed at the actual charge up to the upper limits as paid to state employees in accordance with 200 KAR 2:006.~~

~~Section 11. Limitations. (1) Reimbursement shall be made to a provider for loaded miles only.~~

~~(2) Reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre or postauthorization, for medical transportation as required by the department.~~

~~(3) Authorization shall not be granted for a recipient transported for purposes other than to take the recipient to or from a covered Medicaid service being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from a covered medical service being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from a covered medical service based on the medical condition of the recipient.~~

~~(4) Reimbursement shall be limited to a transportation service and shall not include the service, salary or time of the attendant or parent.~~

~~(5) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pick up to point of delivery.~~

~~(6) Provisions of this administrative regulation do not apply to recipients in counties served by a human service transportation delivery system in accordance with 603 KAR 7:080 and 907 KAR 3:065.~~

~~Section 12. Appeal Rights. A recipient shall have the right of appeal as established in 907 KAR 1:563.]~~

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement criteria for the provision of ambulance services to the Medicaid-eligible population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically-necessary health services identified in KRS 205.560 and 205.6314.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the criteria for the provision of emergency and non emergency transportation by ambulance of a Medicaid recipient to a necessary medical service.

(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 increases the base rate allowance and

mileage allowance rates for ambulance transportation and deletes obsolete information pertaining to non emergency medical transportation which is now addressed in 907 KAR 3.066.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with 2005 GA HB 267.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment increases ambulance transportation reimbursement as mandated in 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by increase ambulance transportation reimbursement as mandated by 2005 GA HB 267.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation This administrative regulation will affect all ambulance carriers enrolled with the Medicaid Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment allows for an increase in set rates for ambulance service to offset increases in the cost of service provision.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment will increase expenditures by approximately $1.95 million ($1.35 million federal funds; 0 6 million state funds) for state fiscal year SFY 2006

(b) On a continuing basis. The increase in fees is not established in legislation beyond SFY 2006, therefore, DMS is unable to estimate the future fiscal impact at this time.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The next fiscal year budget may need to be adjusted to provide funds for implementing the amendment to this administrative regulation if the increase is rendered permanent by future legislation.

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

(9) Tiering: Is tiering applied? Tiering was not 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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only a part of some local governments.

3. State the aspect or service of local government to which this administrative regulation relates: Local government owned or operated ambulance transportation services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 1:065E

This emergency administrative regulation is being promulgated to reduce the allowed amount of bed reserve days and establish bed reserve payment rates based on occupancy percentage. This action must be enacted on an emergency basis in order to maintain the financial 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 identical ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:065E. 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, 483.10(i), 42 U.S C. 1396, a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A 030(2), 194A.050(1), 205.520(3) [~~, EO 2004-726~~]

EFFECTIVE: July 1, 2005

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.

Section 1. Definitions. (1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; and

(b) If ordered by a physician:

1. Laboratory procedures; and

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department shall conduct an appraisal of each price-based NF.

(4) "Appraisal period" means a five (5) year period beginning with an appraisal base year. For example, the appraisal period corresponding to appraisal base year 2000 is January 1, 2000 through December 31, 2004.

(5) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(6) "Capital rate component" means a calculated per diem amount for an NF based on

(a) The NF's appraised depreciated replacement cost;

(b) A value for land,

(c) A value for equipment;

(d) A rate of return,

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(7) "Case-mix" means the average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 2.0 data classified through the RUG III, M3 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.

(10) [~~(11)~~] "Governmental entity" means a unit of government for the purposes of 42 U.S C. 1396b(w)(6)(A).

(11) [~~(12)~~] "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.

(12) [~~(13)~~] "Land" means a surveyed tract or tracts of ground which share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(13) [~~(14)~~] "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(14) [~~(15)~~] "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.

(15) [~~(16)~~] "NF" or "nursing facility" means:

(a) A facility:

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

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

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

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

(16) [~~(17)~~] "NF building" means a roofed and walled structure serviced by electricity, heating and cooling which is also an NF.

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

(18) [~~(19)~~] "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(19) [~~(20)~~] "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(20) [~~(21)~~] "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(i).

(21) [~~(22)~~] "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.

(22) [~~(23)~~] "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.

(23) [~~(24)~~] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

Section 2 NF Reimbursement Classifications and Criteria. (1) An NF, a hospital-based NF, or an NF-MRS shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF level of care criteria pursuant to 907 KAR 1.022, and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare Program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare Program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare Program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for an individual with mental retardation or developmental disability.

Section 3. Swing Bed and Critical Access Hospital NF Bed Reimbursement. (1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NF's for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2) Skilled nursing facility beds in a critical access hospital shall be reimbursed pursuant to subsection (1) of this section if the critical access hospital:

(a) Has no more than twenty-five (25) skilled nursing facility beds; and

(b) Has no more than fifteen (15) acute care patients in the skilled nursing facility beds.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) $2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center (#503) model of the E.H. Boeckh Commercial Building Valuation System to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;
(i) Number of stories;
(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports and similar areas). In addition, interior square footage measurements shall be reported for:
1. A non-NF area;
2. A shared service area by type of service; and
3. A revenue-generating area;
(k) Gross perimeter (common walls between sections shall be excluded from both sections);
(l) Construction quality;
(m) Year built;
(n) Building effective age;
(o) Building condition;
(p) Depreciation percent;
(q) Exterior wall material;
(r) Roof covering material and roof pitch;
(s) Heating system;
(t) Cooling system;
(u) Floor finish;
(v) Ceiling finish;
(w) Partition wall structure and finish;
(x) Passenger and freight elevators - actual number;
(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
(z) Miscellaneous additional features which shall be limited to:
1. Canopies;
2. Entry foyers (sheltered entry ways): glass and aluminum standard allowance shall be twenty (20) dollars per square foot; bulkhead standard allowance shall be 5 (five) dollars per square foot;
3 Loading docks;
4 Bay windows, if not included in the perimeter calculation shall be valued at $1,500 each;
5. Code alerts, Wanderguards, or other special electronically-secured doorways (standard allowance shall be $1,500 for each fully-functioning door at the time of appraisal);
6. Automatic sliding doors (standard allowance shall be $2,700 per doorway);
7. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
8. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (standard allowance shall be thirty-eight (38) dollars and fifty (50) cents per square foot);
9. Walk-in coolers or freezers;
10. Laundry chutes (standard allowance shall be $1,000 per floor serviced);
11. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be $4,500 for initial two (2) stops; $2,100 per additional stop);
12. Skylights (standard allowance shall be twenty-six (26) dollars per square foot);
13. Operable built-in oxygen delivery systems (valued at $250 per serviced bed); and
14. Carpeted wainscotting (standard allowance shall be three (3) dollars and fifty (50) cents per linear foot).

(4) An item listed in subsection (3)(z) of this section shall be subject to the Boeckh model #503 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.

(5) The department shall use the corresponding E.H. Boeckh System default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6) Values from the most recent E.H. Boeckh tables, as of July 1 of the year prior to the appraisal base year, shall be used during an appraisal. For example, values from the most recent 1999 E.H. Boeckh tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department, and

(b)1. The NF undergoes renovations or additions costing a minimum of $150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of $75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) [~~(13)~~] of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize an E.H. Boeckh building model other than the nursing home or convalescent center (#503) model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes, the appraisal shall be apportioned between NF and non-NF by dividing the number of licensed NF beds by the total number of beds, regardless of the occupancy factors.

(11) If, in an NF building, a provider conducts business activities not related to the NF, the appraisal shall be apportioned by the percent of NF square footage relative to the square footage of non-NF-related business activities.

(12) Cost of an appraisal shall be the responsibility of the NF being appraised.

(13) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(14) The department shall not consider the following location factors in rendering an appraisal:
(a) Climate;
(b) High-wind zone;
(c) Degree of slope;
(d) Position;
(e) Accessibility; or
(f) Soil condition.

Section 5. Standard Price Overview. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) 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 aid;
5. An activities staff person; and
6. A medical records staff person; and
(b) Nonpersonnel operating cost including:
1. Medical supplies; and
2. Activity supplies.

(5) The following components shall comprise the noncase mix adjustable portion of an NF's standard price:
(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;
(c) Food,
(d) Professional support; and
(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NF's; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding noncapital facility-related and capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2004 level

MSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price without Capital Cost Component	Total Standard Price Excluding Noncapital Facility Related and Capital Rate Components
Urban	$78.24	$58.84	$137.08
Rural	$64.58	$52.24	$116.82

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price

(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 inflation adjustment [DRI], or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase mix adjustable portion of the NF's standard price which shall include an allowance to offset a provider assessment;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed $40,000;

2. A value for land which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1 of this paragraph; and

3. A value for equipment which shall be $2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor which shall.

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) 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) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid Program pursuant to Section 3(4) of 907 KAR 1:672.

(4) 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; and

3. On the last date of each calendar quarter and revised no later than the data revision cut-off date established in subsection (7)(b) of this section;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twelve B (5.12B) thirty-four (34) group model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a random sample of twenty-five (25) percent of the price-based NF's Medicaid MDS assessments;

2. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraph 1 of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

3. If a review of records cited in subparagraph 2 of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall review 100 percent of the price-based NF's Medicaid MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold.

(4) If the department's review, in accordance with subsection (3)(c)2 and 3 of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in

the initial validation process if the price-based NF requests a rereview within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)3 of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)3 of this section shall be allowed during a review or rereview.

(6) If a rereview of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the rereview; and

(b) Send the final results of the rereview to the NF within ten (10) business days of the conference

(7) Following is a chart establishing:

(a) That an MDS extraction date shall be the last date of each quarter;

(b) That a final MDS assessment data revision cut-off date shall be the last date of the quarter following the date on which MDS data was extracted. For example, MDS data or revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;

(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date,

(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;

(e) MDS assessment accuracy thresholds and corresponding rate sanctions For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and

(f) Rate sanction effective dates

MDS Data Extraction Date	MDS Data Revision Cut-Off Date	Rate Effective Date	Audits Initiated	Required MDS Accuracy Threshold	Rate Sanction	Sanction Effective Date
6/30/01	9/30/01	10/1/01	10/2001	40%	$0 10 per patient day (ppd)	1/1/02
9/30/01	12/31/01	1/1/02	1/2002	40%	$0.10 ppd	4/1/02
12/31/01	3/31/02	4/1/02	4/2002	50%	$0 15 ppd	7/1/02
3/31/02	6/30/02	7/1/02	7/2002	50%	$0.15 ppd	10/1/02
6/30/02	9/30/02	10/1/02	10/2002	65%	$0.20 ppd	1/1/03
9/30/02	12/31/02	1/1/03	1/2003	65%	$0 20 ppd	4/1/03
12/31/02 and forward	3/31/02 and forward	4/1/03 and forward	4/2003 and forward	65-79% 40-64% Below 40%	$0.50 ppd $0.60 ppd $0.70 ppd	7/1/03 and forward

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

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10 (c)(8)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall.

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be [~~covered for a maximum of~~]:

(a) Covered for a maximum of fourteen (14) days per calendar year [~~temporary absence~~] due to hospitalization; [~~, with an overall maximum of forty-five (45) days during a calendar year; and~~]

(b) Covered for a maximum of ten (10) [~~Fifteen (15)~~] days during a calendar year for leaves of absence other than hospitalization;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) 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.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the HCFA Provider Reimbursement Manual - Part 2 (Pub. 15-11) Section 102, 102.1, 102.3, and 104, incorporated by reference into this administrative regulation; and

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services.

(1) 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) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479; and

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-

Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F R. 447.272

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

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

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

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-11) Chapter 1. Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period; April 2000 Edition";

(b) The "Instructions for Completing the Medicaid Supplemental Schedules, November 2003 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.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502-564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement methodology for price based nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS reimbursement methodology for price based nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.

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

(a) How the amendment will change this existing administrative regulation. The amendment to this administrative regulation reduces the allowed amount of bed reserve days and to base bed reserve payment on occupancy percentage.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to maintain the financial viability of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses bed reserve policy as authorized in order to maintain the financial viability of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist DMS in the effective administration of the authorizing statutes reducing the allowed amount of bed reserve days in order to maintain the financial viability of the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 279 price based nursing facilities currently participating in the Medicaid program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The allowed amount of bed reserve days will be lowered and reimbursement based on occupancy percentages.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation will decrease expenditures by approximately $9 0 million ($6.2 million federal funds; $2.8 million state funds) for state fiscal year (SFY) 2006.

(b) On a continuing basis: DMS is unable to determine the future savings resulting from the amendment; however, DMS anticipates the savings will continue if not grow.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement the amendment to this administrative regulation will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the GA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement the amendment to his administrative regulation, and funding will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the GA.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The amendment to this administrative regulation reduces the allowed amount of bed reserve

days as authorized

3 Minimum or uniform standards contained in the federal mandate This administrative regulation does not set minimum or uniform standards related to a federal mandate

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements

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

STATEMENT OF EMERGENCY
907 KAR 1:604E

This emergency administrative regulation is being promulgated to alter the Department for Medicaid Services (DMS) copayment policies. Under this emergency administrative regulation, Medicaid members, except for individuals in an optional eligibility group, shall be required to pay one (1) dollar for each generic drug or atypical antipsychotic drug that does not have a generic equivalent; two (2) dollars for each brand name drug that does not have a generic equivalent and is available under the Supplemental Rebate Program; and three (3) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy. Medicaid members in an optional eligibility group shall be required to pay one (1) three (3) dollars for each generic drug or atypical antipsychotic drug that does not have a generic equivalent; ten (10) dollars for each brand name drug that does not have a generic equivalent and is available under the supplemental rebate program; twenty (20) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy. Additionally, all Medicaid members shall be required to pay two (2) dollars for each visit to a physician's office; three (3) dollars for each outpatient hospital service or visit to an emergency room for a nonemergency service; and fifty (50) dollars for each admission to a hospital for inpatient hospital services. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program and to best utilize the program's resources in serving the health, safety and welfare needs of Medicaid recipients. 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 or provider accessibility. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:604E. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.505, 457.510, 457.515, 457.520, 457.530, 457.570, 42 U.S.C. 1396a, b, c, d, o, r-6, r-8, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.51, 447.53, 447.54, 447.55, 447.57, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5), [~~EO 2004-726~~]

EFFECTIVE: July 1, 2005

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 KRS 205 6312(5) requires the cabinet to promulgate administrative regulations that implement copayments or other similar charges for Medicaid recipients. KRS 205.6485(1) requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program. 42 U.S.C 1396r-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance. This administrative regulation establishes the provisions relating to imposing and collecting copayments and premiums from certain recipients

Section 1. Definitions (1) "Copayment" means that portion of the cost of a Medicaid service that a recipient is required to pay.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Drug" means a covered drug provided in accordance with 907 KAR 1:019 for which the Department for Medicaid Services provides reimbursement.

(4) "General ophthalmological service" means a service or procedure listed under this heading in the American Medical Association's Current Procedure Terminology (CPT).

(5) "Long-term care facility" is defined by KRS 216 510(1).

(6) "KCHIP" means the Kentucky Children's Health Insurance Program.

(7) "KCHIP Separate Insurance Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(8) "Nonemergency service" means a service that does not meet emergency service criteria as established in 42 C.F.R 447.53.

(9) "Optional eligibility group" means a group or group not identified in Social Security Act 1902(a) as a mandatory group or a group established as optional pursuant to Social Security Act 1902(a) or Social Security Act 1905(a)

(10) "Premium" means an amount paid periodically to purchase health care benefits.

(11) [~~(9)~~] "Recipient" means an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with 907 KAR Chapters 1 through 4.

(12) [~~(10)~~] "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earning disregards in accordance with 907 KAR 1:011, Section 5(8)(b).

Section 2. Copayment Amounts and Exclusions. (1) Except as excluded in subsection (4) or (5) of this section, the department shall require a recipient to make a copayment for:

(a) Each drug dispensed by a dispensing pharmacy;

(b) A service provided by:

1. An audiologist;
2. A chiropractor;
3. A dentist;
4. A hearing aid dealer;
5. An optician;
6. A podiatrist; [~~or~~]

(c) A general ophthalmological service provided by:

1. A physician;
2. An advanced registered nurse practitioner;
3. A primary care center or federally qualified health center;
4. A rural health clinic; [~~or~~]
5. An optometrist;

(d) Each visit to a physician's office;

(e) An outpatient hospital service provided accordance with 907 KAR 1:014;

(f) Each visit to an emergency room for a nonemergency service; or

(g) An inpatient hospital admission pursuant to 907 KAR 1:012.

(2) The amount of the required copayment shall be:

(a) Except for an individual in an optional eligibility group, one

(1) dollar for each

1. Generic drug dispensed by a dispensing pharmacy, or

2. Atypical antipsychotic drug dispensed by a dispensing pharmacy if the atypical antipsychotic drug does not have a generic equivalent;

(b) Except for an individual in an optional eligibility group, two (2) dollars for each brand name drug dispensed by a dispensing pharmacy if the brand name drug:

1. Does not have a generic equivalent, and

2. Is available under the Supplemental Rebate Program,

(c) Except for an individual in an optional eligibility group, three (3) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy;

(d) Effective August 1, 2005:

1. Two (2) dollars per recipient, per provider, per date of service for a

a. Visit to a physician's office; or

b. Service identified in subsection (1)(b) or (c) of this section;

2. Three (3) dollars per recipient, per provider, per date of service for a:

a. Covered outpatient hospital service provided in accordance with 907 KAR 1:014, or

b. Visit to an emergency room for a nonemergency service;

3. Fifty (50) dollars per recipient, per provider, per date of service for each covered admission to a hospital for inpatient hospital services provided in accordance with 907 KAR 1:012;

(e) Effective July 15, 2005, three (3) dollars for each:

a. Generic drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group; or

b. Atypical antipsychotic drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group if the atypical antipsychotic drug does not have a generic equivalent;

5. Ten (10) dollars for each brand name drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group if the brand name drug:

a. Does not have a generic equivalent, and

b. Is available under the supplemental rebate program; or

6. Twenty (20) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group.

(3) For each prescription or service for which a copayment is required, the department shall reduce provider reimbursement as follows:

(a) Except for a drug provided to an individual in an optional eligibility group, one (1) dollar from the dispensing fee for a drug dispensed by a dispensing pharmacy;

(b) Two (2) dollars from reimbursement for a service identified in subsection (1)(b) or (c) of this section;

(c) Three (3) dollars from reimbursement:

a. For a covered outpatient hospital service as identified in subsection (1)(e)1 of this section; or

b. For a drug identified in subsection (2)(d)4 of this section;

(d) Ten (10) dollars from reimbursement for a drug identified in subsection (2)(d)5 of this section;

(e) Twenty (20) dollars from reimbursement for a drug identified in subsection (2)(d)6; or

(f) Fifty (50) dollars from reimbursement for each covered admission to a hospital for inpatient hospital services as identified in subsection (1)(g). ~~[(2) The amount of the required copayment shall be:~~

~~(a) One (1) dollar for each drug dispensed by a dispensing pharmacy; or~~

~~(b) Two (2) dollars per recipient, per provider, per date of service for a service identified in subsection (1)(b) or (c) of this section.~~

~~(3) The department shall reduce by the amount of the required copayment:~~

~~(a) A dispensing fee for a service identified in subsection (1)(a) of this section; and~~

~~(b) Reimbursement for a service identified in subsection (1)(b) or (c) of this section.]~~

(4) The department shall not require a copayment and a provider shall not collect a copayment from a recipient for:

(a) A service excluded in accordance with KRS 205.6312;

(b) A service provided to a recipient who has reached his or her 18th birthday but has not turned nineteen (19) and who is:

1. In the custody of the state; and

2. In a foster home or residential placement facility; or

(c) A service provided to a recipient residing in a long-term care facility.

(5) The department shall not require a copayment and a provider shall not collect a copayment in accordance with the exclusions established in 42 U.S.C. 1396o and 42 C.F.R. 447.53.

(6) [~~(a)~~] Unless excluded in subsection (4) or (5) of this section, the department has determined that each Medicaid recipient:

1. Should be able to pay a required copayment; and

2. Shall be responsible for a copayment.

~~[(b) The department shall indicate on a recipient's Medical Assistance Identification card if the recipient is responsible for a copayment.]~~

(7) [~~(6)~~] The department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 3. Provisions for Collection of Copayments. (1) A provider shall collect a copayment from a recipient in an amount and for a service described in Section 2(1) and (2) of this administrative regulation.

(2) A provider may collect the copayment at the time a service is provided or at a later date.

(3) A provider shall not refuse to provide a service if a recipient is unable to pay a required copayment. This provision shall not:

(a) Relieve a recipient of an obligation to pay a copayment; or

(b) Prevent a provider from attempting to collect a copayment.

(4) If it is the routine business practice of a provider to terminate future services to an individual with uncollected debt, the provider may include uncollected copayments under this practice.

(5) A provider shall give advanced notice to a recipient with uncollected debt before services can be terminated.

(6) A provider shall not waive a copayment obligation as imposed by the department for a recipient.

(7) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396R-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(8) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

Section 4. Premiums for KCHIP Separate Insurance Program Recipients. (1) The department shall require a family with children participating in the KCHIP Separate Insurance Program to pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP Separate Insurance Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.

(3) Retroactive eligibility as described in 907 KAR 1:605, Section 2(3), shall not apply to a recipient participating in the KCHIP Separate Insurance Program.

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(b)1. A KCHIP Separate Insurance Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP Separate Insurance Program recipient shall not be required to pay the missed premium before reenrolling.

Section 5. Premiums for Transitional Medical Assistance Recipients. (1) The department shall require a family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, to pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family

has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month, or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or

2. Failure to receive the billing notice.

Section 6. Notices and Collection of Premiums. (1) Premiums shall be collected in the amounts and from the recipients described in Sections 4 and 5 of this administrative regulation.

(2) The department shall give advance notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full, and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

Section 7. Cumulative Cost-sharing Maximum. (1) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of annual family income.

(2) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of the average gross monthly income less the average monthly costs of child care necessary for the employment of the caretaker relative.

Section 8. Provisions for Recipients in Medicaid-Managed Care. (1) If a copayment is imposed on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705, it shall be in accordance with the limitations and provisions established in this administrative regulation.

(2) The premium provisions pursuant to Sections 4 and 5 of this administrative regulation shall apply to a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705.

(3) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6) shall not apply to a recipient required to pay a premium pursuant to Section 4 of this administrative regulation.

Section 9. Freedom of Choice. In accordance with 42 C.F.R. 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

Section 10. Notice of Discontinuance, Hearings, and Appeal Rights. (1) The department shall give notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 4 or 5 of this administrative regulation using the new income level.

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 4(4)(a) or 5(2) of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to imposing and collecting copayments and premiums from certain Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish copayments or other similar charges for Medicaid recipients. This administrative regulation is also necessary to establish premiums for families with children in the Kentucky Children's Health Insurance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.6312(5) by establishing copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o. This administrative regulation conforms to the content of KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance 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 provisions relating to imposing and collecting copayments and premiums from certain Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the Department for Medicaid Services (DMS) copayment policies as follows: Medicaid members, except for individuals in an optional eligibility group, shall be required to pay 1 dollar for each generic drug or atypical antipsychotic drug that does not have a generic equivalent; 2 dollars for each brand name drug that does not have a generic equivalent and is available under the supplemental rebate program; 3 dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy. Medicaid members in an optional eligibility group shall be required to pay one 3 dollars for each generic drug or atypical antipsychotic drug that does not have a generic equivalent; 10 dollars for each brand name drug that does not have a generic equivalent and is available under the supplemental rebate program; 20 dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy. Additionally, all Medicaid members shall be required to pay 2 dollars for each visit to a physician's office; 3 dollars for each outpatient hospital service or visit to an emergency room for a nonemergency service; and 50 dollars for each admission to a hospital for inpatient hospital services. Copayment exclusions exist in accordance with 42 U.S.C. 1396o and 42 C.F.R. 447.53.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary 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 statutes, including

HB 267 of the 2005 Session of the GA, by establishing copayments to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S C. sec. 1396o.

(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 provisions relating to imposing and collecting copayments from certain Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients, outpatient pharmacy providers, physicians, and hospitals 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 Prior to the amendment, Medicaid recipients paid a 1 dollar copayment for all prescriptions and 2 dollars for each general ophthalmological service or each service provided by an audiologist, chiropractor, dentist, hearing aid dealer, optician, or podiatrist The amendment increases copayment amounts for some prescription drugs, depending on the category and depending on whether an individual is in an optional eligibility group, and implements copayments designated services. DMS believes these policies will promote recipient understanding of the cost of medical assistance and encourage responsible utilization. Providers are expected to collect designated copayments from Medicaid recipients.

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

(a) Initially: The Department anticipates an expenditure reduction of $21.6 million ($15 million in federal funds and $6 6 million in state matching funds) for state fiscal year (SFY) 2006. The anticipated total savings breaks down for each category as follows: a decrease of $10 million for prescription drugs; a decrease of $5 million for emergency room visits; a decrease of $3 million for physician office visits; a decrease of $2.5 million for inpatient hospital services; and a decrease of $1.1 million for outpatient hospital services.

(b) On a continuing basis: DMS is unable at this time to estimate the anticipated expenditure reductions on a continuing basis.

(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. However, an increase in designated copayment amounts is 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. However, this administrative regulation establishes provisions relating to imposing and collecting copayments and premiums from certain recipients.

(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 recipient cost sharing

2. State compliance standards. This administrative regulation complies with KRS 205.6312(5) by establishing copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U S C. sec. 1396o This administrative regulation complies with KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance Program.

3 Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U S C. sec. 1396o.

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this administrative regulation is necessary to control the rising costs of prescription drugs and other services covered by the Medicaid Program, thereby maintaining the financial viability of the Department for Medicaid Services.

STATEMENT OF EMERGENCY
921 KAR 2:015E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)2 and 3 to comply with meeting a state deadline and prevent a loss of state funds. The purpose of this emergency administrative regulation is to implement the provisions of HB 267 of the 2005 GA. HB 267 increases the State Supplementation payment to Personal Care Homes by twenty (20) dollars per month per eligible resident for the personal needs allowance and two (2) dollars per day per eligible resident for a facility payment increase. An ordinary administrative regulation would not allow the agency sufficient time to ensure the Personal Care State Supplementation payment increase became effective at the beginning of state fiscal year 2006. This emergency administrative regulation, to be effective July 1, 2005, establishes through HB 267 of the 2005 GA a State Supplementation payment increase to Personal Care Homes by twenty (20) dollars per month per eligible resident for the personal needs allowance, and two (2) dollars per day per eligible resident for a facility payment increase. The emergency administrative regulation filed within the previous nine (9) months increased standards for all State Supplementation recipients by passing along the two and seven-tenths (2.7) percent Supplemental Security Income Cost-of-Living Adjustment increase for 2005. The previous emergency administrative regulation was filed on December 30, 2004. This emergency administrative regulation is not identical to the ordinary administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Policy Development
Department for Community Based Services
(Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1385, 2005 Ky. Acts ch. 173 Part I, H.10.(4)

STATUTORY AUTHORITY: KRS 194A.050(1) ~~[194B.050(1)]~~, 205.245, 42 U.S.C. 1382e-g, 2005 Ky. Acts ch. 173 Part I, H.10.(4) ~~[, EO 2004-726]~~

EFFECTIVE: June 21, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) ~~[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 194B.050(1)]~~ requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973 and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. In addition, 2005 Ky. Acts ch. 173 Part I, H. 10.(4) requires the cabinet to increase State Supplementation payments to personal care homes by twenty (20) dollars per month per eligible resident for the personal needs allowance and two (2) dollars per day per eligible resident for a facility payment increase. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind or had a disability.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973, and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue when:

(a) The needs of the recipient as recognized in December 1973 have decreased, or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged, or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4),

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(6); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

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

(a) Residence in a personal care home that:

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

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

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

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the

month after the month of.

1. Discharge to a

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation, or

b. Residence; or

2. Death of the state supplementation recipient, and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of.

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death, or discharge of the state supplementation recipient, or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this Section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this Section may result in prosecution

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

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

1. The spouse;

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

3 Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this Section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) 907 KAR 1:645,

(c) 907 KAR 1:650, Section 1(6); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations (1) Except as noted in subsections (2) through (8) of this Section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1 640, Sections 1(1), (6), (7), (10), and 3(4),

(b) 907 KAR 1.645;

(c) 907 KAR 1:650, Section 1(6), and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding·

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient, and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself, and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made on or after July 1, 2005, $1,099 [~~January 1, 2005, $1,019~~];

(b) A resident of a family care home made on or after January 1, 2005, $751; or

(c) Caretaker:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2005, $641;

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2005, $938; or

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2005, $984.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care [~~or family care~~] home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) [~~forty (40)~~] dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

(5) The requirements for subsections (1)(a) and (3) of this section shall be effective July 1, 2005

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary, and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section,

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital,

(b) Psychiatric hospital, or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem:

1. For a state supplementation recipient in the personal care home's care; and

2. As of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an "Application for Mental Illness or Mental Retardation Supplement Program Benefits" with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter:

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail a "Notice of Decision to Personal Care Home" to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall.

(a) Provide the department with a "Monthly Report Form" that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the "Monthly Report Form" to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this Section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) A personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the

needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the "Application for Mental Illness or Mental Retardation Supplement Program Benefits" is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2 a. Has received mental illness or mental retardation basic training; or

b Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this Section, the department shall pay twenty-five (25) dollars to a personal care home:

(a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months.

(b) A personal care home's Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey after the initial survey may be completed during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria is met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation,

2. The personal care home:

a Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b Maintains documentation of attendance at the in-service training for all direct care staff,

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training.

a Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation, and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population, as specified in Section 12(1)(c)2 of this administrative regulation, is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department:

(a) Monthly; and

(b) By the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, established in 921 KAR 2:050.

(9) If a criteria for certification is not met, the department shall mail a "Notice of Decision to Personal Care Home" to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the "Notice of Decision to Personal Care Home":

(a) Relevant to unmet certification criteria specified on the "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey"; and

(b) Within ten (10) working days after the "Notice of Decision to Personal Care Home" is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, as specified in Section

12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home, edition 1/05";

(b) "Monthly Report Form, edition 1/05";

(c) "Application for Mental Illness or Mental Retardation Supplement Program Benefits, edition 1/05"; and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey, edition 1/05".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m to 4.30 p.m.

MIKE ROBINSON, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, JR., M D., Secretary
APPROVED BY AGENCY: June 7, 2005
FILED WITH LRC: June 21, 2005 at 4 p m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of

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

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.245 by complying with an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients. This administrative regulation conforms to KRS 194A.050(1) which requires the secretary to adopt administrative regulations necessary under applicable state laws to operate programs and fulfill responsibilities vested in the cabinet.

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

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation increases State Supplementation payments to Personal Care Homes by $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary due to passage of 2005 GA HB 267. HB 267, AN ACT relating to appropriations and revenue measures providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state-supported activities, increases State Supplementation payments to Personal Care Homes by $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 194A.050(1) by complying with the mandated increase to Personal Care Homes in 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes: This amendment in accordance with KRS 194A 050(1) implements the mandated State Supplementation payment increase of 2005 GA HB 267 to Personal Care Homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2005, there were approximately 3,347 personal care recipients of State Supplementation benefits. There were approximately 84 freestanding personal care homes and 118 personal care beds in long term care facilities.

(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 State Supplementation payment to a Personal Care Home is $1,099 minus the personal care allowance of $60 to the State Supplementation recipient.

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

(a) Initially: $3,218,120

(b) On a continuing basis: $3,218,120

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds or Agency Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The appropriated total of $3.3 million additional dollars in HB 267 is based upon a fee for a Child Abuse and Neglect (CAN) check in accordance with KRS 17.165. This and surplus in the State Supplementation Program will offset the $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase. There are no fees in this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applied since passage of 2005 GA HB 267 increased State Supplementation payments to only Personal Care Homes and did not extend to Family Care Homes or individuals in a caretaker situation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. 416.2095 and 20 C.F R. 416.2096.

2. State compliance standards. KRS 194A.050(1), 205.245.

3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. 416.2095 and 20 C.F.R. 416.2096.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division
(As Amended at ARRS, July 12, 2005)

40 KAR 2:350. Debt Adjusters.

RELATES TO: KRS 380.010, 380.030, 380.040, 380.050, 380.990 [2005 Ky. Acts ch. 38, secs. 1, 2, 3, 4, 5 and 6.]
STATUTORY AUTHORITY: KRS 380.040(5), 380.050 [2005 Ky. Acts ch. 38, secs. 2(5) and 3.]
NECESSITY, FUNCTION AND CONFORMITY: KRS 380.050 [2005 Ky. Acts ch. 38, sec. 3] requires the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 380, relating to debt adjusting. KRS 380.040(5) [2005 Ky. Acts ch. 38, sec. 2(5)] requires a person to file a registration form developed by the Attorney General. This administrative regulation establishes the registration and renewal process and incorporates by reference the forms to be utilized by persons subject to registration.

Section 1. Definitions. (1) "Division" means the Office of the Attorney General, Consumer Protection Division.

(2) "Registrant" means a person filing the registration form required by KRS 380.040(5) [2005 Ky. Acts ch. 38, sec. 2(5)] and this administrative regulation.

(3) "Registration form" means the "Commonwealth of Kentucky Debt Adjuster Registration Statement".

Section 2. Registration. (1) The initial registration, or a renewal of registration, for a person engaging in debt adjusting pursuant to KRS Chapter 380[,] shall be made on the "Commonwealth of Kentucky Debt Adjuster Registration Statement". Each person engaging in debt adjusting shall register by:

(a) Completing the information required by the registration form and submitting:

1. The required information identifying the registrant's business structure including:

a. Articles of incorporation or organization;

b.[,] Partnership or joint venture agreements; and

c.[,] Evidence of registration or qualification to do business in the Commonwealth of Kentucky;

2.[,] A copy of the insurance policy; and

3.[, and additional information, if required, regarding a conviction, regulatory action or litigation in connection with a consumer credit or debt adjustment business, and a] Sample contract of registrant's services;[.]

(b) Filing the original of the registration form and accompanying documentation with the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601; and

(c) Paying the fee required by KRS 380.040(5) [2005 Ky. Acts ch. 38, sec. 2(5)].

(2) Registration shall be valid for one (1) year from the date of approval of registration by the division, and may be renewed annually by making the required filing and paying the renewal fee.

(3) Deadline for filing.

(a) The initial registration form and fee shall be filed with the division prior to the date the registrant will engage in debt adjusting pursuant to KRS Chapter 380.

(b) The renewal registration form and fee shall be filed with the division at least four (4) weeks prior to the expiration of the registration.

(c) The registration form shall be considered filed as of the date it is:

1. Delivered to the Division; or

2. Deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of filing.

(4) [A registration may be withdrawn by the registrant prior to approval by submitting a written request that the registration form be withdrawn.

(5)](a) If the Division determines that the registration form or the materials submitted with the registration form do not contain all information required by KRS Chapter 380 or this administrative regulation, the division shall notify the registrant in writing, specifying the information that was not completed in the registration form.

(b) The registration shall not be effective [or approved] until an amended registration form is filed with the division that contains all information required by KRS Chapter 380 and this administrative regulation.

(c) The division shall provide a written confirmation of [approval of] registration.

Section 3. A person shall not engage in debt adjusting prior to the timely filing of a complete and accurate registration which has been confirmed [approved] by the division pursuant to Section 2(4)(c) of this administrative regulation.

Section 4. Annual Audit. (1) The annual audit required by KRS 380.040(6) [2005 Ky. Acts ch. 38, sec. 2(6)] shall include an audit of:

(a) The registrant's financial statements and records;

(b) The trust accounts required by KRS 380.040(1)(b) [2005 Ky. Acts ch. 38, sec. 2(1)(b)];

(c) The registrant's compliance with the requirements of KRS Chapter 380; and

(d) The registrant's compliance with the requirements of this administrative regulation.

(2) The Commonwealth of Kentucky Debt Adjuster Audit Checklist, Form DA-2 [(4/2005)], shall be used for purposes of the annual audit and filed with the results of the annual audit.

(3) The results of the audit and the auditor's opinion filed with the division shall be accompanied by a certification from each individual auditor joining in the opinion. The certification shall include:

(a) The auditor is an independent, third-party certified public accountant;

(b) The states in which the auditor is licensed as a certified public accountant; and

(c) The identification number for each license.

(4) The results of the audit and the auditor's opinion, and the certification by each auditor, shall be filed with each renewal registration form, and shall be no older than twelve (12) months prior to the date of filing of the renewal registration form.

Section 5. The trust accounts required by KRS 380.040(1)(b) [2005 Ky. Acts ch. 38, sec. 2(1)(b)] shall be maintained in a federally insured financial institution.

Section 6. (1) A person engaged in debt adjusting shall notify the division within five (5) business days of any change in, or cancellation of, or receipt of notice of cancellation of, the insurance coverage required by KRS 380.040(7) [2005 Ky. Acts ch. 38, sec. 2(7)].

(2) Except as required by subsection (1) of this section [6(1) of this administrative regulation], within thirty (30) days of any material change in the information provided on or submitted with the registration form, a registrant shall notify the division of each [such] change and submit an updated registration form. The annual renewal date for the registrant shall not be affected by the filing required by this section.

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

(a) The "Commonwealth of Kentucky Debt Adjuster Registration Statement", Form DA-1 July 2005 [(4/2005)], and

(b) The "Commonwealth of Kentucky Debt Adjuster Audit Checklist", Form DA-2 July 2005 [(4/2005)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY D. STUMBO, Attorney General

APPROVED BY AGENCY: April 15, 2005

FILED WITH LRC: April 15, 2005 at 10 a.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317.

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
Division of Legislative Services
(As Amended at ARRS, July 12, 2005)

103 KAR 1:050. Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.420, 134.430, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.0704, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 137.130, 137.160, 138.165(2), 138.195, 138.210, 138.240, 138.250, 138.260, 138.270, 138.341, 138.342, 138.344-138.355, 138.358, 138.320, 138.450, 138.460, 138.464, 138.4605, 138.470(4), (5), (6), 138.480, 138.530, 138.870, 138.876, 138.880, 138.885, 139.095, 139.170, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260(1), (2), (3), 139.270, 139.470(1), (7), (10), (11), (14), 139.480, 139.483, 139.495, 139.497, 139.5382(1)(a), 139.550(1), (2), (4), 139.590(1), 139.620(1), 139.770(2), 140.010, 140.060, 140.080(1)(a), 140.100, 140.130, 140.160, 140.165, 140.190, 140.222, [140.240, 140.250, 140.260, 140.265,] 140.300-140.360, 140.350, 141.010(11), 141.0105, 141.011, 141.020, 141.0202, 141.0205, 141.021, 141.0215, 141.030, 141.040, 141.041, 141.042, 141.044, 141.050(4), 141.065, 141.070, 141.120, 141.150, [141.151,] 141.160, 141.170, 141.180, 141.190, 141.200, 141.206, 141.210, 141.235, 141.300, 141.305, 141.315, 141.325, 141.330, 141.335, 141.340, 141.347, 141.370, 141.390, 141.395, 141.400, 141.403, 141.407, 141.990, 142.010, [142.040,] 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), [154.12-219,] 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 209.160, 224.01-310(1), [224.60-822, 224.60-823,] 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120, 11 U.S.C. 501, Pub.L. 105-261, Ky. Const. Sec. 170

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms.

Section 1. Administrative - Required Forms. (1) Revenue Form KY-1345, "Handbook for Electronic Filers of Individual Income Tax Returns, Tax Year 2004 [2003]" shall provide information to assist tax preparers and transmitters in the submission of 2004 [2003] Federal and Kentucky Individual Income Tax Returns.

(2) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(3) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(4) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(5) Revenue Form 10A100, "Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;

(b) Corporation income and license;

(c) Motor vehicle tire fee; and

(d) Sales and use.

(6) Revenue Form 10A100CS, "Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;

(b) Corporation income and license;

(c) Motor vehicle tire fee; and

(d) Sales and use.

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", provides instructions for the proper completion of Revenue Form 10A100, Kentucky Tax Registration Application for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee.

(8) Revenue Form 10A100CS-I, "Instructions for Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", provides instructions for the proper completion of Revenue Form 10A100CS, "Kentucky Tax Registration Application for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee".

(9) Revenue Form 10A100-S, "Kentucky Tax Registration Supplemental Information Schedule" shall be completed by persons submitting Revenue Form 10A100 or 10A100CS to provide additional business information.

(10) Revenue Form 10A101, "Kentucky General Business License Application", shall be completed by every person required to obtain a seller's permit as provided in KRS 139.240 and every person required to register and collect Kentucky use tax under KRS 139.340.

(11) Revenue Form 10A170, "Request For Notification of Administrative Regulation Filing" shall be used by individuals to request receipt of copies of ordinary administrative regulations filed with the Legislative Research Commission by the Department of Revenue.

(12) Revenue Form 10A700, "Kentucky Tax Amnesty Application", shall be completed as application for the Tax Amnesty Program offered between August 1, 2002 and September 30, 2002.

(13) Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(14) Revenue Form 10F710, "Important Information Regarding Your Tax Amnesty Application", shall provide the public with information relating to the Kentucky Tax Amnesty Program.

(15) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was pre-

viously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(16) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectibility or doubt as to liability.

(17) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the commonwealth.

(18) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(19) Revenue Form 12A109, "Release of Levy", shall be presented to the bank or third party on which the levy was served for the purpose of releasing the seized property.

(20) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(21) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be used by a taxpayer requesting to pay Kentucky tax liability in installments

(22) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(23) [~~(22)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Revenue Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the commonwealth's best interest.

(24) [~~(23)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(25) [~~(24)~~] Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property can be sold.

(26) [~~(25)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the commonwealth.

(27) [~~(26)~~] Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer", shall be presented to the corporate officers for the purpose of entering into a payment agreement to pay the trust taxes owed to the commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers.

(28) [~~(27)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collections", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(29) [~~(28)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(30) [~~(29)~~] Revenue Form 12A508-1, "Notice of Assessment", shall be presented to an officer of a corporation who is personally liable for trust taxes for the purpose of assessing an officer for trust taxes owed to the commonwealth.

(31) [~~(30)~~] Revenue Form 12A509, "Notification of Delinquent Taxpayer", shall be presented to the Mines and Minerals district office and the Mines and Mineral's office located in Frankfort, for the purpose of notifying the Mines and Mineral's Department that the Kentucky Department of Revenue is requesting that a mine license not be renewed, and notification to the entity itself for nonpayment or filing of taxes owed to the commonwealth.

(32) [~~(31)~~] Revenue Form 12A510, "Guidelines for Wage Levy Processing", shall be presented to employers to explain how to process a wage levy on an employee.

(33) [~~(32)~~] Revenue Form 12A511, "Guidelines for Bank Levy Processing", shall be presented to banks to explain how to process a bank levy.

(34) [~~(33)~~] Revenue Form 12A512, "Confidential Agent Appointment", shall be presented to an agent of the taxpayer who desires to represent a taxpayer for the purpose of resolving tax issues.

(35) [~~(34)~~] Revenue Form 12A513, "Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state

(36) [~~(35)~~] Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the commonwealth.

(37) [~~(36)~~] Revenue Form 12A516, "Requirements for Agreed Judgments", shall be presented to a business owner against whom the Kentucky Department of Revenue has a judgment for taxes for the purpose of allowing the business owner to make installment payments approved through the Franklin Circuit Court.

(38) [~~(37)~~] Revenue Form 12A517, "Notice of State Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39) [~~(38)~~] Revenue Form 12A518, "Certificate of Release of Tax Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(40) [~~(39)~~] Revenue Form 12A519, "Proof of Claim", shall be presented to the bankruptcy courts for the purpose of asserting the Kentucky Department of Revenue's claim upon the taxpayer's assets for the payment of delinquent taxes.

(41) [~~(40)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals and Instructions", shall be presented to individuals requesting to make payments or settle their tax liability to the commonwealth for the purpose of establishing the financial ability to make payments or settle.

(42) [~~(41)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", provides instructions for completing Revenue Form 12A638.

(43) [~~(42)~~] Revenue Form 12A639, "Statement of Financial Condition for Business ", shall be presented to business owners requesting to make payments or settle a tax liability to the commonwealth for the purpose of establishing the financial ability to make payments or settle.

(44) [~~(43)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", provides instructions for completing Revenue Form 12A639.

(45) [~~(44)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(46) [~~(45)~~] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(47) [~~(46)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(48) [~~(47)~~] Revenue Form 21A050, "Business Account Numbers", shall be issued to business taxpayers to confirm processing of the Kentucky Tax Registration Application for Individual Income Tax Employer Withholding, Corporation Income and License, Coal Severance and Processing and Sales and to advise as to the account numbers assigned by the department.

(49) [~~(48)~~] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(50) [(49)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the taxpayer and the auditor to acknowledge payment of taxes determined to be tentatively due at the time of an audit

(51) [(50)] Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", shall be used to ascertain the capability of taxpayer records to facilitate audit through use of electronic data

(52) [(51)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(53) [(52)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(54) [(53)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(55) [(54)] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(56) [(55)] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(57) [(56)] Revenue Form 42F102, "Large Employer Program Electronic File Fact Sheet", shall provide employers with information on the "ELF" Federal/State Electronic Tax Filing Program.

Section 2. Alcoholic Beverage Tax. (1) Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", shall be used by persons importing distilled spirits, wine and malt beverages into Kentucky through the United States Bureau of Customs for personal consumption in this state to acknowledge liability for the alcoholic beverage excise tax.

(2) Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", shall be used by distillers, rectifiers or bottlers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(3) Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", shall be used by wholesalers of distilled spirits to report liability for distilled spirits excise tax, wholesale sales tax and case sales tax.

(4) Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", shall be used by wholesalers of distilled spirits to itemize monthly receipts of distilled spirits from all sources.

(5) Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", shall be used by consignor's of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(6) Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", shall be used by transporters of distilled spirits, wine and malt beverages to report shipments of alcoholic beverages delivered into the state during the previous month.

(7) Revenue Form 73A535, "Report on Destruction of Alcoholic Beverages", shall be used by governmental officials to certify quantities of tax-paid alcoholic beverages no longer suitable for consumption that are destroyed in the officials' presence.

(8) Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", shall be used by wine wholesalers to report liability for wine excise tax and wine wholesale sales tax.

(9) Revenue Form 73A576, "Vintner's Wine Report", shall be used by vintners to report liability for wine excise tax and wine wholesale sales tax.

(10) Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", shall be used by wine wholesalers to report shipments of wine received during the previous month.

(11) Revenue Form 73A626, "Brewer's Monthly Report Schedule", shall be used by brewers of malt beverages to report sales and distribution of malt beverages into Kentucky.

(12) Revenue Form 73A627, "Beer Distributor's Monthly Report", shall be used by beer distributors to report shipments of malt beverages received during the previous month.

(13) Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", shall be used by distributors of malt beverages to report liability for malt beverage excise tax and malt beverage wholesale sales tax.

(14) Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", shall be used by beer distributors to report shipments of malt beverages to federal military agencies.

Section 3. Bank Franchise Tax - Required Forms. (1) Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", shall be used by financial institutions which are regularly engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(2) Revenue Form 73A801, "2004 [2003] Bank Franchise Tax Return", shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year 2004 [2003].

(3) Revenue Form 73A801I, "2004 [2003] Kentucky Bank Franchise Tax Forms and Instructions Packet", provides in a single packet the forms used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

(4) Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 4. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Cigarette Licenses Application", shall be used by persons interested in acting as a cigarette wholesaler, subjobber, vending machine operator, or unclassified acquirer to apply for the necessary license.

(2) Revenue Form 73A190, "Cigarette License", shall be used by the Department of Revenue to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters and unclassified acquirers that they have been granted the appropriate license.

(3) Revenue Form 73A404, "Cigarette Tax Stamps or Meter Units Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

(4) Revenue Form 73A406, "Cigarette Tax Credit Certificate", shall be used by the Department of Revenue to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.

(5) Revenue Form 73A409, "Cigarette Evidence/Property Receipt", shall be used by compliance officers and the property owner to acknowledge custody of seized goods.

(6) Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler and Wholesaler's Monthly Report of Nonparticipating Manufacturer Cigarettes Sold in Kentucky", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fee and to report cigarettes that were purchased from manufacturers and importers of cigarettes who did not sign the Master Settlement Agreement (nonparticipating manufacturers).

(7) Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler" shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.

Section 5. Corporation Income and License Taxes. (1) Revenue Form 41A720, "Form 720, 2004 [2003] Kentucky Corporation Income and License Tax Return", shall be used by corporations to determine corporation income and license tax due in accordance with KRS 141.040 and 136.070, respectively, for years beginning

in 2004 [2003]

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation", shall be used by corporations which have property or payroll both within and without of Kentucky to apportion and allocate net income to Kentucky in accordance with KRS 141.120.

(3) Revenue Form 41A720CC "Schedule CC, Coal Conversion Tax Credit", shall be used by corporations to compute the credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141 041(1).

(4) Revenue Form 41A720CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by taxpayers to request approval for the amount of credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the company to generate electricity.

(5) Revenue Form 41A720ES, "Form 720ES, 2005 [2004] Kentucky Corporation Income Tax Estimated Tax Voucher", shall be used by corporations to submit payments of estimated corporation income tax as required by KRS 141 044.

(6) Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit shall be used by corporations to determine the credit allowed to qualified businesses in accordance with KRS 154.45-100.

(7) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by individuals, corporations, fiduciaries, and partnerships to determine the credit allowed by KRS 141.0202.

(8) Revenue Form 41A720I, "Instructions, 2004 [2003] Kentucky Corporation Income and License Tax Return", shall be used by corporations to file the 2004 [2003] Kentucky Corporation Income and License Tax Return and related schedules.

(9) Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by corporations and partnerships to determine the credit against income tax liability allowed by KRS 141 395

(10) Revenue Form 41A720QR (K-1), Pro Rata/Distributive Share of Approved Qualified Research Facility Tax Credit", shall be used by S Corporations and partnerships to compute each shareholder/partner's share of income tax credit for qualified costs of research facilities.

(11) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax Credit for Recycling and/or Composting Equipment", shall be used by individuals, corporations, fiduciaries, and partnerships to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment. This form shall also be used by individuals, corporations and fiduciaries to substantiate and keep a record of the amount of approved credit claimed on their income tax return.

(12) [(10)] Revenue Form 41A720RC(C), "Schedule RC - Part I Continuation", shall be used by individuals, corporations, fiduciaries, and partnerships to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(13) [(11)] Revenue Form 41A720RC (K-1), "Schedule RC (K-1), Pro Rata/Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit", shall be used by S corporations and partnerships to report to each shareholder/partner their pro rata/distributive share of approved income tax credit for the purchase and installation of recycling or composting equipment. This form shall also be used by shareholders/partners to substantiate and keep a record of the amount of approved credit claimed on their income tax return.

(14) [(12)] Revenue Form 41A720S, "Form 720S, 2004 [2003] Kentucky S Corporation Income and License Tax Return", shall be used by S corporations to determine the amount of ordinary income or (loss) and to determine total shareholders' shares of income, (loss), credits, deductions, etc. for tax years beginning in 2004 [2003]. This form shall also be used to determine the S corporation's income tax liability in accordance with KRS 141.040(5), if applicable and to determine license tax due in accordance with KRS 136.070.

(15) [(13)] Revenue Form 41A720S1, "2004 [2003] Kentucky Corporation Income and License Tax Forms and Instructions Packet", provides in a single packet Form 720, Kentucky Corporation Income and License Tax Return, other forms commonly used by corporations in conjunction with Form 720 and instructions for filing these forms The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".

(16) [(14)] Revenue Form 41A720S2, "2004 [2003] Kentucky S Corporation Income and License Tax Forms and Instructions Packet", provides in a single packet Form 720S, Kentucky S Corporation Income and License Tax Return, other forms commonly used by S corporations in conjunction with Form 720S and instructions for filing these forms The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".

(17) [(15)] Revenue Form 41A720-S4, "Instructions for Filing Corporation Estimated Income Tax Voucher", are instructions used by corporations to determine the amount of estimated corporation income tax that is required to be paid in accordance with KRS 141.044.

(18) [(16)] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (for A KREDA Project of C Corporations)", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.

(19) [(17)] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for A KREDA Project", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and income tax credits for the duration of the project Instructions shall be included on the back of the form.

(20) [(18)] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for A KREDA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.

(21) [(19)] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for A KIDA Project of C Corporations)", shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

(22) [(20)] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for A KIDA Project", shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(23) [(21)] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for A KIDA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

(24) [(22)] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for A KIRA Project of C Corporations)", shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

(25) [(23)] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for A KIRA Project", shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(26) [(24)] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (for A KIRA Project of S Corporations or Partnerships)", shall be used by S corporations and partnerships which have a Kentucky Industrial Revitalization Act (KIRA) project

to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

(27) [(25)] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for A KJDA Project of C Corporations)", shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

(28) [(26)] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for A KJDA Project", shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(29) [(27)] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for A KJDA Project of S Corporations or Partnerships)" shall be used by S corporations and partnerships which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

(30) [(28)] Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More than One (1) Economic Development Project)", shall be used by corporations which have more than one (1) economic development project to reflect the amount of credit claimed for each project for the taxable year. Instructions shall be included on the back of the form.

(31) [(29)] Revenue Form 41A720-S31, " Kentucky Schedule K for S Corporations with Economic Development Project(s)", shall be used by S corporations which have one or more economic development projects to determine total shareholders' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects Instructions shall be included on the back of the form.

(32) [(30)] Revenue Form 41A720-S32, "Schedule KIRA-L, Tax Credit Computation Schedule, License Tax (For a KIRA Project of Corporations)", shall be used by corporations which have entered into a revitalization agreement for a Kentucky Industrial Revitalization Act (KIRA) project to compute the allowable KIRA license tax credit.

(33) Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of C Corporations)", shall be used by C Corporations who have entered into a Kentucky Reinvestment (KRA) Act project to compute the allowable KRA credit allowed against the Kentucky corporation income tax liability.

(34) Revenue Form 41A720-S36, "Schedule KRA-L, Tax Credit Computation Schedule License Tax (For a KRA Project of Corporations)", shall be used by C Corporations who have entered into a Kentucky Reinvestment (KRA) Act project to compute the allowable KRA credit allowed against the Kentucky corporation license tax liability.

(35) Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For A KRA Project", shall be used by C Corporations who have entered into a Kentucky Reinvestment (KRA) Act project to main a record of the balance of approved costs and income and license tax credits for the duration of the agreement.

(36) [(31)] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of C Corporations)", shall be used by C Corporations who have entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against the Kentucky corporation income tax liability.

(37) [(32)] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of S Corporations or Partnerships)," shall be used by any S corporation or partnership which has entered into a service and technology agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against the Kentucky income tax liability.

(38) [(33)] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by any company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and income tax credits for the duration of the agreement

(39) [(34)] Revenue Form 41A720SI, "Instructions for 2004 [2003] Kentucky S Corporation Income and License Tax Return", shall be used by S corporations to file the 2004 [2002] Kentucky S Corporation Income and License Tax Return and related schedules.

(40) [(35)] Revenue Form 41A720S (K-1), "Schedule K-1 (Form 720S), 2004 [2003] Kentucky Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by S corporations to report to their shareholders the amount of income, credit, deduction, etc., that the shareholder should report for Kentucky income tax purposes. Instructions shall be included on the back of the form to assist the shareholder in preparing their Kentucky individual income tax return.

(41) [(36)] Revenue Form 41A720SL, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions shall be included on the back of the form.

(42) [(37)] Revenue Form 41A720X, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by corporations to report changes to the Kentucky Corporation Income and License Tax Return, as previously filed.

(43) [(38)] Revenue Form 41A722, "Form 722, Election to File Consolidated Kentucky Corporation Income Tax Return" shall be used by corporations to elect to file a consolidated Kentucky income tax return in accordance with KRS 141.200.

(44) [(39)] Revenue Form 41A750, "Business Development Corporation Tax Return", shall be used by corporations organized under the provisions of KRS Chapter 155 to determine the excise tax due in accordance with KRS 155.170.

(45) [(40)] Revenue Form 41A851K, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by corporations which are filing a consolidated Kentucky income tax return to identify the members of the affiliated group which are subject to the Kentucky corporation license tax and to list the amount of tax being paid for each corporation if payment is being submitted by a single check.

(46) [(41)] Revenue Form 42A799, "Kentucky Information Return for Calendar Year ____", shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19.030, to report distributions of assets as a result of dissolution or liquidation. A separate form shall be prepared for each payee and filed with the Department of Revenue, and a copy shall be provided to the payee.

(47) [(40)] Revenue Form 42A799-S1, "Form 796, Annual Income Information Return, shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19:030, to summarize the reports of distributions of assets as a result of dissolution or liquidation.

Section 6. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) Revenue Form 73A060(I), "Instructions-Kentucky Health Care Provider Tax Return" shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(3) Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 7. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request" shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes" shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2004 [2003] Application for Extension of Time to File Individual, Partnership and Fiduciary Income Tax Returns for Kentucky" shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request as six (6) months extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A200 (PTE-WH), "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual member whose net distributive share income is at least $1,000.

(5) Revenue Form 40A201 (740NP-WH), "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual members.

(6) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition" shall be used to order income tax forms

(7) Revenue Form 42A680, "Kentucky Individual Income Tax Return Audit Report" shall be used by the Department of Revenue to advise an individual of an adjustment to income tax credits on an individual income tax return which may result in an underpayment or overpayment

(8) Revenue Form 42A701B, "Kentucky Individual Income Tax Return Audit Report" shall be issued by the Department of Revenue to advise an individual of an adjustment to income tax and credits on an individual income tax return which may result in an underpayment or overpayment.

(9) Revenue Form 42A705, "Kentucky Income Tax Withholding Audit Report" shall be used by the Department of Revenue to explain an adjustment to withholding tax reported and to the credits claimed on a withholding income tax return.

(10) Revenue Form 42A740, "2004 [2003] Kentucky Individual Income Tax Return Full-Year Residents Only" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003 [2002], and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(11) Revenue Form 42A740-EZ, "2004 [2003] Kentucky Individual Income Tax Return for Single Persons with No Dependents" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003 [2002], and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(12) Revenue Form 42A740-J (10-04 [12-00]), "Schedule J, Kentucky Farm Income Averaging Schedule", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning December 31, 1997.

(13) Revenue Form 42A740-L, "2000 Kentucky Income Tax Postcard" shall be used to mail labels and information to resident individuals.

(14) Revenue Form 42A740-M, "Schedule M, 2004 [2003] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(15) Revenue Form 42A740-S9, "2004 [2003] Kentucky Income Tax Return, Nonresident or Part Year Resident" shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(16) Revenue Form 42A740-NP-A, "Schedule A, 2004 [2003] Kentucky Schedule A Itemized Deductions" shall be completed and attached to Form 42A740-S9 by part-year or full-year nonresidents in support of itemized deductions claimed for 2004 [2003].

(17) Revenue Form 42A740-NP-ME, "Schedule ME, 2004 [2003] Moving Expense Reimbursement" shall be completed and attached to Form 42A740-S9 by part-year or full-year nonresidents in support of moving reimbursement income and expenses claimed for 2004 [2003].

(18) Revenue Form 42A740-S9-R, "2004 [2003] Kentucky Income Tax Return, Nonresident-Reciprocal State" shall be completed by resident individuals of reciprocal states to request a refund of withholding for 2004 [2003]

(19) Revenue Form 42A740-S10, "2004 [2003] Kentucky Income Tax Return, Nonresident or Part-Year Resident forms and instructions" packet shall be mailed to nonresident and part-year resident individuals for use in determining taxable income and income tax liability for 2004 [2003].

(20) Revenue Form 42A704-S11, "2004 [2003] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ" shall be provided for use by residents in determining taxable income and income tax liability for 2004 [2003].

(21) Revenue Form 42A740-ES, "2005 [2004] Individual Income Tax Kentucky Estimated Tax Voucher" shall be submitted to Department of Revenue by individuals with payment of quarterly estimated tax

(22) Revenue Form 42A740-S1, "2210-K, 2004 [2003] Underpayment of Estimated Tax by Individuals" shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for 2004 [2002].

(23) Revenue Form 42A740-S4, "2005 [2004] Instructions for Filing Estimated Tax Vouchers" shall be used to compute the amount of estimated tax owed for 2005 [2004].

(24) Revenue Form 42A740-T, "2004 [2003] Kentucky Individual Income TeleFile Tax Record and Instructions" shall be completed by resident individuals who choose to file their individual income tax return by telephone.

(25) Revenue Form 42A740-X, "Amended Kentucky Individual Income Tax Return for Tax Year 2000, 2001, 2002, 2003, 2004" shall be completed by individuals and filed with the Department of Revenue to amend a previously filed return.

(26) Revenue Form 42A740-A, "Kentucky Schedule A, 2004 [2003] Itemized Deductions" shall be completed by resident individuals and attached to Form 740 in support of itemized deductions claimed for 2004 [2003]

(27) Revenue Form 42A740-P, "Schedule P, 2004 [2003] Kentucky Pension Income Exclusion" shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2004 [2003].

(28) Revenue Form 42A740-TC, "Schedule TC, 2004 [2003] Tax Computation Schedule" shall be completed by individuals and attached to Form 740 to claim credit for tax paid to another state, the hiring of an unemployed person, purchasing (installing) recycling or composting equipment, and to compute tax liability using five (5) or ten (10) year averaging for 2004 [2003].

(29) Revenue Form 42A740-UTC, "Schedule UTC, Unemployment Tax Credit" shall be completed by individuals and attached to Form 740, or Form 740-NP to provide Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person(s).

(30) Revenue Form 42A740-S18, "8582-K, 2004 [2003] Kentucky Passive Activity Loss Limitations" shall be completed by individual taxpayers and attached to their individual tax return in support of allowable deductions and loss carryovers of a passive activity.

(31) Revenue Form 42A740-S20, "1045-K, 2004 [2003] Kentucky Net Operating Loss Application for Income Tax Refund" shall be used by individuals to compute and carry back a net operating loss deduction.

(32) Revenue Form 42A740-S20(I), "Instructions - Form 1045-K" shall be provided to individuals to explain the purpose of Form 1045-K and provide line by line instructions on how to complete the form.

(33) Revenue Form 42A740-S21, "4972-K, 2004 [2003] Kentucky Tax on Lump-Sum Distributions" shall be completed by individuals to compute tax liability on lump sum distributions and attached to their income tax return.

(34) Revenue Form 42A740-S22, "8453-K, 2004 [2003] Kentucky Individual Income Tax Declaration for Electronic Filing" shall be completed, signed by individual taxpayer(s) and submitted to Department of Revenue in support of an electronically filed return.

(35) Revenue Form 42A740-S23, "740-V, 2004 [2003] Kentucky Electronic Payment Voucher" shall be used by individual taxpayers and submitted to the Department of Revenue with payment of additional tax due on an electronically filed return.

(36) Revenue Form 42A741, "Form 741, 2004 [2003] Kentucky Fiduciary Income Tax Return" shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by the fiduciary of an estate or trust to report income and tax liability of the estate or trust.

(37) Revenue Form 42A741(I), "Instructions - Form 741, 2004 [2003] Kentucky Fiduciary Income Tax Return" is an instruction guide provided by the Department of Revenue for completing the 2004 [2003] Form 741.

(38) Revenue Form 42A741-D, "Schedule D, Form 741, 2004 [2003] Kentucky Capital Gains and Losses" shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(39) Revenue Form 42A741(K-1), "Schedule K-1 Form 741, 2004 [2003] Kentucky Beneficiary's Share of Income, Deduction, Credits, etc." shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, credits

(40) Revenue Form 42A765, "Form 765, 2004 [2003] Kentucky Partnership Income Return" shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a partnership to report income, deductions and credits of a partnership for 2004 [2003]

(41) Revenue Form 42A765(I), "Instructions-Form 765, 2004 [2003] Kentucky Partnership Income Return" shall be provided to assist the partnership in completing a partnership return.

(42) Revenue Form 42A765(K-1), "Kentucky Schedule K-1 Form 765, 2004 [2003] Partner's Share of Income, Credits, Deductions, etc." shall be filed by the partnership with Form 765 to report each partner's share of income, deductions, credits.

(43) Revenue Form 42A765-S1, "2004 [2002] Kentucky Schedule K for Partnerships with Economic Development Project(s)", shall be used by partnerships which have one (1) or more economic development projects to determine total partner or partners share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions shall be included on the back of the form.

(44) Revenue Form 42A800, "Withholding Kentucky Income Tax Instructions for Employers and Withholding Tax Tables" shall be used by employers to determine the amount of Kentucky tax to withhold from wages.

(45) Revenue Form 42A801, "Form K-1, Kentucky Employer's Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and taxes withheld for the filing period.

(46) Revenue Form 42A801-D, "Form K-1, Amended Kentucky Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(47) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Return and Worksheet of Income Tax Withheld - Electronic Funds Transfer" shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(48) Revenue Form 42A802, "W-2/ K-2, 2004 [2003] Wage and Tax Statement" shall be used by employers to report wages and Kentucky tax withheld.

(49) Revenue Form 42A803, "Form K-3, Kentucky Employer's Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(50) Revenue Form 42A803-D, "Form K-3, Amended Kentucky Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period and annually reconcile wages and taxes reported.

(51) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Return and Worksheet - Electronic Funds Transfer" shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(52) Revenue Form 42A804, "Form K-4, Kentucky Revenue Cabinet Employee's Withholding Exemption Certificate" shall be used by employees to inform employers of the number of exemptions used to determine the amount of Kentucky tax to withhold from wages.

(53) Revenue Form 42A804-A, "Form K-4A, Kentucky Revenue Cabinet Withholding Exemptions for Excess Itemized Deductions" shall be used by employees to determine additional withholding exemptions.

(54) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate" shall be used by employees to inform employers of special tax exempt status

(55) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements" shall be used by employers to annually submit Forms W-2/K-2 Wages and Tax Statements.

(56) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate" shall be completed by nonresident employees working at Fort Campbell Kentucky to inform employers of special tax exempt status

(57) Revenue Form 42A808, "Authorization to Submit Annual Employee Wage and Tax Statements Via Kentucky Department of Revenue Web Site [File Transfer Protocol]", shall be used by employers to request authorization to annually submit wages and tax statements via Kentucky Department of Revenue Web site [file transfer protocol].

(58) Revenue Form 42A809, "Certificate of Nonresidence" shall be used by employees to inform employers of special tax exempt status.

(59) Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax" shall be used by individuals to submit sworn statement concerning residency status.

(60) Revenue Form 42A811, "KREDA Annual Report" shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(61) Revenue Form 42A812, "KIDA Annual Report" shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(62) Revenue Form 42A813, "KJDA Annual Report - 2004 [2001]" shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(63) Revenue Form 42A814, "KIRA Annual Report" shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(64) Revenue Form 42A815, "Withholding Tax Refund Application" shall be completed by employers to request a refund of withholding tax paid.

(65) Revenue Form 42A816, "KEOZ Annual Report" shall be completed by employers to claim KEOZ wage assessment fees.

(66) Revenue Form 42A820, "Address Correction Request", shall be used by employers to verify correct mailing address for withholding returns.

(67) Revenue Form 42D003, "Kentucky Order Form for W-2/K-2", shall be used by employers to order wage and tax statements.

Section 8. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return and Instructions", shall be used by the personal representative or beneficiary of a nonresident estate to establish the inheritance and estate tax due the commonwealth.

(2) Revenue Form 92A110, "Real Estate Data Report", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purpose.

(3) Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return Packet", shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the commonwealth.

(4) Revenue Form 92A120I, "Instructions 92A120 Packet", is an instruction booklet to be used by the personal representative or beneficiary of a resident estate to prepare the appropriate inheritance and estate tax return.

(5) Revenue Form 92A120S, "Inheritance and Estate Tax Short Form Packet" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the commonwealth.

(6) Revenue Form 92A120X, "Kentucky Spousal Inheritance Tax Return", shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the commonwealth.

(7) Revenue Form 92A121, "Acceptance of Inheritance & Es-

tate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the commonwealth have been paid

(8) Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the commonwealth.

(9) Revenue Form 92A201, "Kentucky Inheritance and Estate Tax Return - No Tax Due", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish that there is no inheritance and estate tax due the commonwealth.

(10) Revenue Form 92A202, "Kentucky Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the commonwealth.

(11) Revenue Form 92A204, "Real Estate Valuation Information Sheet", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.

(12) Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)" shall be used by the personal representative or beneficiary of a small or uncomplicated resident or nonresident estate to establish the inheritance and estate tax due the commonwealth.

(13) Revenue Form 92A500, "Notice of Insurance Payment", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.

(14) Revenue Form 92A926, "Notice of Benefits Paid by Employer/Insurance Company", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.

(15) Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiary or beneficiaries of an estate to defer the payment of inheritance tax through installments.

(16) Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", shall be used to request the county clerk place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.

(17) Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk release the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(18) Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk do a partial release of the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(19) Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", is a receipt given to taxpayer when tax payment is received in the office.

(20) Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.

(21) Revenue Form 92F001, "Blanket Lien Release", notice shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and provides a blanket lien release on all property owned by any decedent.

(22) Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 9. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, "Insurance Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Department of Insurance to report liability for insurance premiums tax.

(4) Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurer", shall be completed by domestic and foreign insurance companies to report captive insurance tax.

(5) Revenue Form 74A110, "2005 [2004] Kentucky Estimated Insurance Premiums Tax", shall be used by insurance companies to remit estimated premiums tax payments

(6) Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.

(7) Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.

(8) Revenue Form 74A118, "Monthly Insurance Surcharge Report", shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for insurance premium surcharge

Section 10. Legal Process - Required Forms. Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

Section 11. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, "Notice of Seizure and Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerk of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 12. Motor Fuels - Required Forms. (1) Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the commonwealth of any refunds to which the public boat dock refund applicant was not entitled.

(2) Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", shall be used by a public boat dock to make application.

(3) Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", shall be used by public boat dock refund applicant to make application for refund of liquid fuel tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which designated refund applicant may become liable under KRS 138.344 to 138.355.

(5) Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", shall be used by licensed gasoline or special fuels dealers to report and remit

monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the KRC to issue Kentucky Motor Fuels Tax Refund Permits

(7) Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuel.

(8) Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund Invoice", shall be used by licensed Kentucky gasoline or special fuels dealers to authonze purchases of nonhighway agricultural use or nonhighway special fuels for refund of Kentucky motor fuel tax paid.

(9) Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the commonwealth of any refunds to which the aviation gasoline refund applicant was not entitled

(10) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", shall be used by aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(11) Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund of aviation gasoline tax.

(12) Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs", shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or taxicab refund applicant was not entitled.

(13) Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation and taxicab companies.

(14) Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs", shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation and taxicabs.

(15) Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", shall be used by licensed gasoline dealers to report gasoline sales to U.S. government on their monthly reports.

(16) Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", shall be used by licensed gasoline or special fuels dealers to make claim for accountable loss of motor fuel.

(17) Revenue Form 72A080, "Report of Gasoline Received from Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report receipt of tax free gasoline from licensed Kentucky dealers on the gasoline dealer's monthly report.

(18) Revenue Form 72A081, "Report of Gasoline Imported from Other States" shall be used by licensed gasoline dealers to report gasoline imported from other states, on the gasoline dealer's monthly report.

(19) Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky - Kentucky Tax Paid to Suppliers", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid to the supplier, on the gasoline dealer's monthly report.

(20) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Supplier", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report

(21) Revenue Form 72A082, "Report of Gasoline Imported", shall be used by licensed gasoline dealers to report gasoline imported, on the gasoline dealer's monthly report.

(22) Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", shall be used by licensed gasoline dealers to report gasoline received from terminal or refinery, on the licensed gasoline dealer's monthly report.

(23) Revenue Form 72A084, "Report of Gasoline Exported", shall be used by licensed gasoline dealers to report gasoline exported, on the gasoline dealer's monthly report

(24) Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report gasoline sold to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(25) Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", shall be used by licensed gasoline dealers to report gasoline withdrawals from terminal storage, on the gasoline dealer's monthly report

(26) Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report withdrawals of gasoline to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(27) Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", shall be used by licensed gasoline dealers to report withdrawals of gasoline exported or sold for export, on the gasoline dealer's monthly report.

(28) Revenue Form 72A089, "Licensed Gasoline Dealers Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

(29) Revenue Form 72A090, "Gasoline Dealers Monthly Terminal Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.

(30) Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by gasoline dealers to claim a credit for gasoline sold for agricultural purposes to holders of Kentucky motor fuels tax refund permits.

(31) Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", shall be used by licensed transporters to report monthly motor fuel delivenes.

(32) Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", shall be used by licensed gasoline dealers to report and remit estimated gasoline tax monthly payments.

(33) Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", shall be used by licensed special fuels dealers to report special fuels sales to U.S. government, on the special fuels dealer's monthly report.

(34) Revenue Form 72A110, "Certification of Special Fuels Nonhighway Use", shall be used by qualifying entities to certify the nonhighway use of special fuels. The certification shall be maintained by the licensed special fuels dealer.

(35) Revenue Form 72A124, "Report of Kerosene Received and Blended", shall be used by licensed special fuels dealers to report kerosene received and blended, on the licensed special fuels dealer's monthly report.

(36) Revenue form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to state or local government agencies for nonhighway special fuels use for a specific monthly period.

(37) Revenue form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to nonprofit religious, charitable or education organizations for nonhighway special fuels use for a specific monthly period.

(38) Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit (Undyed Diesel)", shall be used by licensed special fuels dealers to report special fuels sold for commercial off-road use to holders of Kentucky motor fuels tax refund permits who issued to the dealer a Certification of Special Fuels Nonhighway Use, Form 72A110.

(39) Revenue form 72A131, "Special Fuels Dealer's Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to motor fuels tax refund permit holders for agricultural special fuels use for a specific monthly period.

(40) Revenue form 72A132, "Special Fuels Dealer's Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to consumers for heating a personal residence for a specific monthly period

(41) Revenue form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", shall be used by a person desiring to qualify for a refund of motor fuel excise tax paid for nonhighway use.

(42) Revenue form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period.

(43) Revenue form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list every special fuels shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(44) Revenue form 72A154, "Report of Special Fuels Imported from Other States", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state sources on which the Kentucky special fuels excise tax was not precollected by the supplier for a specific monthly period.

(45) Revenue form 72A154-P, "Purchaser's Report Special Fuels Imported-Kentucky Tax Paid to Supplier", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was paid to the supplier for a specific monthly period.

(46) Revenue form 72A154-S, "Supplier's Report Special Fuels Imported-Kentucky Tax Paid by Supplier", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was charged to the dealer's customer for a specific monthly period.

(47) Revenue form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special fuels dealer to list of every shipment exported to another state for a specific monthly period.

(48) Revenue form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to other licensed special fuels dealers for a specific monthly period.

(49) Revenue form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to a valid Motor Fuels Tax Refund Permit holder for exclusive use by railroad companies for nonhighway purposes for a specific monthly period.

(50) Revenue form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed special fuels dealer to report the special fuels tax liability for a specific monthly period and calculate ninety-five (95) percent of the applicable tax due for remittance by the due date.

(51) Revenue form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", shall be used by a licensed liquefied petroleum gas dealer to report all gallons of liquefied petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period.

(52) Revenue form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", shall be used by a licensed liquefied petroleum gas dealer to list every shipment of liquefied petroleum gas placed into the fuel tank of a licensed motor vehicle for a specific monthly period.

(53) Revenue form 72A163, "Application for Liquefied Petroleum Gas Motor Fuels Tax Exemption Permit", shall be used by any entity desiring to obtain an exemption from the motor fuels excise tax on liquefied petroleum gas to provide data regarding his carburetion system to insure compliance with the standards established by the Natural Resources and Environmental Protection Cabinet.

(54) Revenue form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", shall be used by a licensed special fuels dealer to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly penod.

(55) Revenue form 72A171, "Report of Special Fuels Imported", shall be used by a licensed special fuels dealer to list all shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly penod.

(56) Revenue form 72A172, "Report of Special Fuels Received from Terminal or Refinery", shall be used by a licensed special fuels dealer to list all shipments received from other Kentucky terminals and placed into Kentucky terminal storage for a specific monthly period.

(57) Revenue form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list all shipments withdrawn to other licensed special fuels dealers for a specific monthly period.

(58) Revenue form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", shall be used by a licensed special fuels dealer to provide a list of every shipment withdrawn from terminal storage and exported to another state for a specific monthly period.

(59) Revenue form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", shall be used by a licensed special fuels dealer to provide total gallon withdrawals from his terminal storage facility or facilities for a specific monthly period.

(60) Revenue Form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", shall be used by licensed special fuels dealers to report the total dyed diesel gallons received and distributed for a specific monthly period.

(61) Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", shall be used by licensed special fuels dealer to list every dyed diesel shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(62) Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", shall be used by licensed special fuels dealer to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(63) Revenue Form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", shall be used by licensed special fuels dealers to report kerosene and any other receipts received and/or blended with dyed diesel.

(64) Revenue Form 72A220, "Dyed Diesel Monthly Terminal Storage Report", shall be used by licensed special fuels dealers to summarize all dyed diesel Kentucky terminal receipts and disbursements activity for a specific monthly period.

(65) Revenue Form 72A221, "Report of Dyed Diesel Imported", shall be used by licensed special fuels dealers to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(66) Revenue Form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel received from a terminal or refinery located in Kentucky into terminal storage.

(67) Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage going to licensed Kentucky dealers.

(68) Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals either exported or sold for export from terminal storage.

(69) Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage.

(70) Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", shall be used by licensed special fuels dealers

to report dyed diesel gallons exported or sold for export into another state.

(71) Revenue Form 72A231, "Report of Dyed Diesel Sold to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers to report dyed diesel sold to licensed Kentucky dealers.

(72) Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", shall be used by licensed special fuels dealers to report approved accountable loss of dyed diesel gallons.

(73) Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by licensed special fuels dealers to report dyed diesel sold for exclusive use by railroad companies for nonhighway purposes.

(74) Revenue Form 72A234, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government", shall be used by licensed special fuels dealers to report dyed diesel sold to the U.S. government.

(75) Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", shall be used by licensed special fuels dealers to report dyed diesel sold for nonhighway use.

(76) Revenue form 72A300, "Tax Registration Application for Motor Fuels License", shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petroleum gas dealer's or motor fuel transporter's license.

(77) Revenue Form 72A301, "Motor Fuels License Bond", shall be executed by a corporation authorized to transact surety business in Kentucky on behalf of a licensee to insure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.

(78) Revenue Form 72A302, "Motor Fuels License", shall be used by the Department of Revenue to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.

(79) Revenue Form 72A303, "Election Application/Cancellation Form", shall be used by gasoline and special fuels dealers to elect to pledge a financial instrument other than a corporate surety bond.

Section 13. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.

(2) Revenue Form 71A101, "Motor Vehicle Usage Tax Multipurpose Form", shall be presented to the county clerk by a vehicle owner to:

(a) Claim one (1) of several exemptions;

(b) Establish "retail price" if prescribed by the department; or

(c) Establish "retail price" of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.

(3) Revenue Form 71A102, "Questionnaire", shall be completed by selected motor vehicle buyers and sellers providing specific information regarding a vehicle transaction.

(4) Revenue Form 71A103, "Application for Protective Refund of Motor Vehicle Usage Tax Used Vehicles Purchased Out of State" shall be completed in order to submit a claim for trade-in credit on a used motor vehicle purchased outside Kentucky.

(5) Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification" shall be presented to the county clerk by a certified resident of an enterprise zone to claim exemption from the motor vehicle usage tax upon the first registration or transfer of a motor vehicle.

(6) Revenue Form 71A163, "Affidavits to Support Interstate Motor Carrier Motor Vehicle Usage Tax Exemption", shall:

(a) Be used by the nonresident owner of a motor vehicle which is:

1. Based in a state other than Kentucky; and

2. Required to be registered in Kentucky pursuant to KRS 186.145; and

(b) State that the vehicle:

1. Will be used primarily in interstate commerce; and

2. Pursuant to KRS 138.470(5), is exempt from the motor vehicle usage tax

(7) Revenue Form 71A174, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Weekly Report", shall be submitted to the Department of Revenue by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.

(8) Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", shall be submitted to the Department of Revenue by a county clerk to report motor vehicle usage tax collections if an extension of time to file the computer generated weekly recapitulation report is requested.

(9) Revenue Form 73A054, "Kentucky Application For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to register to participate in the Loaner/Rental Vehicle Tax program

(10) Revenue Form 73A055, "Monthly Report For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to report tax due on vehicles dedicated for use in the Loaner/Rental Vehicle Tax program.

(11) Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Deposit/ACH Call-in", shall be used by county clerks for extension of ACH call-in deposits.

Section 14. Property Tax - Required Forms. (1) Revenue Form 61A200, "Public Service Company Property Tax Return and Instructions", shall be filed by public service companies with the Department of Revenue reporting company name, location and other pertinent filing information.

(2) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension of time to file the public service company tax return.

(3) Revenue form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(4) Revenue Form 61A200(H), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year.

(5) Revenue Form 61A200(I), "Business Summary by Taxing District", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district.

(6) Revenue Form 61A200(J), "Property Summary by Taxing Districts", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(7) Revenue Form 61A200(K), "Operating Property Listing by Taxing District", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district.

(8) Revenue Form 61A200(K2), "Nonoperating Property Listing by Taxing District", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special taxing district.

(9) Revenue Form 61A200(L), "Report of Property and Business Factors for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(10) ~~[Revenue Form 61A200(L2), "Report of Property and Business Factors for Commercial Passenger and Cargo Airlines", shall be filed by interstate commercial passenger and cargo airlines with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.~~

~~(11)~~] Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(11) [~~(12)~~] Revenue Form 61A200(N), "Report of Leased Real Property, [and] Personal Property, and System Report of Leased

Property [and Kentucky Operating Leases]", shall be filed by public service companies with the Department of Revenue, reporting all leased property and the terms of the lease.

(12) [(13)] Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting name and address of the company and the mileage in Kentucky.

(13) [(14)] Revenue Form 61A200(P), "Report of Cable Television [Kentucky Operations]", shall be filed by public service companies with the Department of Revenue, reporting their Kentucky property investment.

(14) [(15)] Revenue Form 61A200Q, "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current and projected operational information

(15) [(16)] Revenue Form 61A200R, "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certified pollution control equipment, the original cost and the net book value.

(16) [(17)] Revenue Form 61A200S, "Filing Requirements for Commercial Passenger and Cargo Airlines", shall be filed by passenger and cargo airline companies with the Department of Revenue, reporting statistical information about all owned and leased aircraft.

(17) [(18)] Revenue Form 61A200T, "Report of Reseller Leasing Form", shall be filed by cable television and telephone companies leasing access to or from other providers, with the Department of Revenue, reporting company name and address.

(18) [(19)] Revenue Form 61A200U, "Industrial Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(19) [(20)] Revenue Form 61A200W, "Wireless Telephone Provider Report" shall be filed by wireless telephone providers operating in Kentucky to report spectrum data for those companies operating totally or partially in Kentucky.

(20) [(21)] Revenue Form 61A202, "2005 [2004] Public Service Company Property Tax Return for Railroad Car Line" shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age and mileage for each railcar.

(21) [(22)] Revenue Form 61A203, "2005 [2004] Apportioned Vehicle Property Tax Return and Instructions" shall be completed by motor vehicle carriers engaged in interstate commerce and operating partially in Kentucky to report ad valorem tax liabilities.

(22) [(23)] Revenue Form 61A207, "2005 [2004] Nonresident Watercraft Property Tax Return", shall be filed by nonresident watercraft owners which do not fall under the filing requirements of KRS 136.120, with the Department of Revenue, reporting the watercraft's book value, original cost and total and Kentucky mileage.

(23) [(24)] Revenue Form 61A207I, "Instructions - 61A207", shall be available to assist taxpayers who are required to file revenue form 61A207.

(24) [(25)] Revenue Form 61A208, "2005 [2004] Public Service Company Property Tax Return Coin Operated Telephones", shall be filed by owners of coin-operated telephones with the Department of Revenue, reporting an activity summary and copies of the annual report to stockholder's and Kentucky financial statements.

(25) [(26)] Revenue Form 61A209, "Public Service Company Sales", shall be filed by a taxpayer, which has sold or bought a public service company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(26) [(27)] Revenue Form 61A210, "Cable Television Company Sales", shall be filed by a taxpayer, which has sold or bought a cable television company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(27) [(28)] Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased 2004 Motor Vehicles with Kentucky Situs" shall be filed by public service companies with the Department of Revenue to assure proper credit for previously assessed motor vehicles.

(28) [(29)] Revenue Form 61A211(I), "Instructions for Revenue Form 61A211", November, 2004 [October, 2003] shall provide instructions for completing "Revenue Form 61A211, Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs".

(29) [(30)] Revenue Form 61A230, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue to the taxpayer notifying him of the final assessment of the public service company property

(30) [(31)] Revenue Form 61A240, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue notifying him of a tentative assessment of the public service company property This notice also informs the taxpayer of the protest period.

(31) [(32)] Revenue Form 61A250, "Notice of Assessment for Public Service Company on the Taxpayer's Claim of Value", shall be sent by the Department of Revenue notifying the taxpayer of his claim of assessed value on public service company property.

(32) [(33)] Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special distncts to bill public service companies for local property taxes.

(33) [(34)] Revenue Form 61A507, "Distilled Spirits or Nonresident Watercraft Property Tax Statement", shall be used by counties, schools and special districts to bill for local property taxes.

(34) [(35)] Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distillenes with the Department of Revenue to report inventory as of January 1.

(35) [(36)] Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(36) [(37)] Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage of Cost Schedule", shall be filed by distillenes with the Department of Revenue, reporting average per barrel storage cost.

(37) [(38)] Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age and the price.

(38) [(39)] Revenue Form 61A508-S4, "Schedule 4", shall be filed by distillenes with the Department of Revenue, reporting the fair cash value for case goods and other inventory reported on form 61A508.

(39) [(40)] Revenue Form 62A006, "Motor Boat Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor boat owners of their ad valorem property tax liabilities and registration renewal.

(40) [(41)] Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(41) [(42)] Revenue Form 62A007S, "Delinquent Motor Vehicle/Boat Property Tax - Second Notice" shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(42) [(43)] Revenue Form 62A008, "Motor Vehicle Tax Notice" shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.

(43) [(44)] Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(44) [(45)] Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administrating agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(45) [(46)] Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(46) [(47)] Revenue Form 62A016, "Quietus" shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(47) [(48)] Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills" shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills

(48) [(49)] Revenue Form 62A018, "School Taxing Junsdiction - Motor Vehicle and Watercraft Property Tax Rate" shall be completed by the Department of Revenue to list the motor vehicle and watercraft property tax rates for each school taxing jurisdiction.

(49) [(50)] Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts" shall be completed by the Department of Revenue to list the fiscal year ad valorem property tax distributions to the various county fiscal courts.

(50) [(51)] Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distnbutions of ad valorem property tax made to individual taxing jurisdictions.

(51) [(52)] Revenue Form 62A023, "Application for Exemption from Property Taxation" shall be filed by organizations, other than institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue

(52) [(53)] Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations" shall be filed by institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue.

(53) [(54)] Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", shall be filed by owners or lessees of undeveloped oil and gas property with the Department of Revenue, reporting property by county, including a map for each property location and lessee information for leased property.

(54) [(55)] Revenue Form 62A030, "Request for Reproduction of PVA Public Records", shall be submitted to request copies of documents required to be retained by the PVA.

(55) [(56)] Revenue Form 62A037, "Mail Back Card Department of Property Valuation", shall be filed by property owners, other than the owners of mobile homes, to report information regarding their property to the Department of Revenue in order to ensure assessment quality.

(56) [(57)] Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", shall be filed by owners of mobile homes to report information regarding their property to the Department of Revenue in order to ensure assessment quality.

(57) [(58)] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax", shall be completed by the owner of a vehicle or boat, at the property valuation administrator's office in order to correct owner or vehicle/boat information in the ad valorem tax computer system. The PVA will present the form to the county clerk when a tax refund is authorized.

(58) [(59)] Revenue Form 62A050, "Application for Property Tax Refund", shall be filed by taxpayers seeking a refund of taxes.

(59) [(60)] Revenue Form 62A200, "2005 [2004] Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting filer information.

(60) [(61)] Revenue Form 62A200A, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(61) [(62)] Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", shall be filed by owners or lessees of unmined coal with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(62) [(63)] Revenue Form 62A200C, "Schedule C Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting a property schedule for each parcel leased from another party and outlined on the lessee map.

(63) [(64)] Revenue Form 62A200D, "Schedule D Property or Stock Transfers" shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(64) [(65)] Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers and Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, date lease was terminated and the reason for termination.

(65) [(66)] Revenue Form 62A200F, "Schedule F Farm Exception to Unmined Mineral Tax [Geological Information by County]", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primanly in farming, to be excepted from the unmined minerals tax [owners or lessees of unmined miners, with the Department of Revenue, reporting exploration and analytical information]

(66) [(67)] Revenue Form 62A200G, "Schedule G Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information [properties with no changed from the previous tax year].

[(68) Revenue Form 62A200H, "Schedule H Farm Exception to Unmined Minerals Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.]

(67) [(69)] Revenue Form 62A302, "Property Information Request Regarding Assessment Appeal", shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(68) [(70)] Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll" shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district; also known as "first recap".

(69) [(71)] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes" shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304; also known as "final recap" or "second recap".

(70) [(72)] Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owners appeal conference. The property owner or his representative shall be asked to sign the record and shall be given a copy of the record.

(71) [(73)] Revenue Form 62A310, "Corporation Report of Securities Held by Kentucky Resident - Cover Letter", shall be filed with the by Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(72) [(74)] Revenue Form 62A310-S1, "Corporation Report of Securities Held by Kentucky Residents", shall be filed by Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(73) [(75)] Revenue Form 62A311, "Life Insurance Proceeds Report Kentucky Property Tax - Cover Letter", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(74) [(76)] Revenue Form 62A311-S1, "Life Insurance Proceeds Report", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(75) Revenue Form 62A320, "Broker's Report of Margin or Cash Accounts of Kentucky Residents", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting margin or cash accounts of Kentucky residents

(76) Revenue Form 62A320-S1, "Kentucky Margin Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the margin accounts of holders as of January 1.

(77) Revenue Form 62A320-S2, "Kentucky Cash Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the cash accounts of holders as of January 1

(78) [~~(77)~~] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

(79) [~~(78)~~] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Section 170 of the Kentucky Constitution. This application shall be filed with the property valuation administrator of the county in which the residential unit is located

(80) [~~(79)~~] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

(81) [~~(80)~~] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his omitted property has been listed and assessed and of his appeal rights

(82) [~~(81)~~] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him of their ruling

(83) [~~(82)~~] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(84) [~~(83)~~] Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(85) [~~(84)~~] Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(86) [~~(85)~~] Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(87) Revenue Form 62A366-R, "Exoneration Form for Property Tax Refund" shall be filed by taxpayer for refunds of property tax.

(88) Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills" shall be used by property valuation administrator to prepare additional/supplemental tax bills(s).

(89) [~~(86)~~] Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections" shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(90) [~~(87)~~] Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections" shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(91) [~~(88)~~] Revenue Form 62A376, "Intangible Property Tax Return", shall be filed by owners of taxable intangible property, with either the property valuation administrator in the county of taxable situs or the Department of Revenue, reporting all taxable intangible at fair cash value as of January 1 of the year of the return.

(92) [~~(89)~~] Revenue Form 62A376I, "Instructions Intangible Property Tax Return", shall be available to taxpayers who are required to file 62A376.

(93) [~~(90)~~] Revenue Form 62A378, "Report of Location of Mobile Homes", shall be filed by every person providing rental space for mobile homes and house trailers. This form shall be filed with the property valuation administrator of the county in which the park is located.

(94) [~~(91)~~] Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by property valuation administrator to list any involuntary omitted property.

(95) [~~(92)~~] Revenue Form 62A384, "Oil Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed oil property in Kentucky, reporting the lease, purchaser and operator's name, as well as production information.

(96) [~~(93)~~] Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting owner's name and address, percent ownership, product tons and royalty rate

(97) [~~(94)~~] Revenue Form 62A384-C(I), "Instructions for Completing Clay Property Tax Return for 2002 Tax Year", shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384.

(98) [~~(95)~~] Revenue Form 62A384F, "Flourspar Property Tax Return", shall be filed with the Department of Revenue by persons owning flourspar property, reporting percent ownership, type of mineral owned, estimated tons of mineable reserves and estimated value of mineral reserves.

(99) [~~(96)~~] Revenue Form 62A384G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells and the total dollar value of production.

(100) [~~(97)~~] Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

(101) [~~(98)~~] Revenue Form 62A384O, "Oil Property Tax Return Lease Report", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky

(102) [~~(99)~~] Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid And Partially Paid Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he assumes office.

(103) [~~(100)~~] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

(104) [~~(101)~~] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections" shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

(105) [~~(102)~~] Revenue Form 62A398, "Property Valuation Administrator's Bond" shall be completed by Property Valuation Administrators evidencing surety with the commonwealth and local school board(s) and affirming a commitment to fulfill the duties of the office.

(106) [~~(103)~~] Revenue Form 62A399, "Notice To Appear in Circuit Court", shall be served to a person who is indebted to another person who has a delinquent tax liability.

(107) [~~(104)~~] Revenue Form 62A400, "Notice of Distraint", shall be sent by the sheriff to notify persons in possession of personal property belonging to a delinquent taxpayer that this property is subject to distraint in order to settle the tax liability.

(108) [~~(105)~~] Revenue Form 62A401, "Final Notice Before Distraint", shall be sent by the sheriff to the owner of real and personal property omitted from the tax roll.

(109) [~~(106)~~] Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify that a certificate of delinquency has been issued against the property.

(110) [~~(107)~~] Revenue Form 62A500," 2005 [~~2004~~] Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting taxpayer information, original cost of tangible property and reported value of tangible property.

(111) [~~(108)~~] Revenue Form 62A500A," 2005 [~~2003~~] Tangible Personal Property Tax Return for Aircraft", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either

the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft

(112) Revenue Form 62A500C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting [(109)] consignor information and consigned inventory information.

(113) [(110)] Revenue Form 62A500L, "Lessee Tangible Personal Property Tax Return" shall be filed by lessees of tangible personal property who did not list the property on revenue form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

(114) [(111)] Revenue Form 62A500W," 2005 [2004] Tangible Personal Property Tax Return (Documented Watercraft) [for Non-Kentucky Registered Watercraft and Documented Watercraft]", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model and taxpayer's value for each watercraft.

(115) [(112)] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

(116) [(113)] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

(117) [(114)] Revenue Form 62A601-S1, "Schedule A [Computation of] Apportionment Factor [for Foreign Savings and Loans]", shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A601, reporting the amount of Kentucky receipts, loans and payrolls

(118) [(115)] Revenue Form 62A601-S2, "Influence Amount Schedule B", shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A600 or 62A601, reporting the market value of U. S. government securities.

(119) [(116)] Revenue Form 62A850, "Bank Deposits Tax Return" shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

(120) [(117)] Revenue Form 62A861, "Schedule 1 Summary of Deposits" shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A600 or 62A601, listing deposits located in each county and city

(121) [(118)] Revenue Form 62A862, "Certification of Tax Rates for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify us of the rate set on bank deposits.

(122) [(119)] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

(123) [(120)] Revenue Form 62A863-A, "Schedule A, Summary of Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

(124) [(121)] Revenue Form 62A864, "Trust Questionnaire", shall be sent by the Department of Revenue to a taxable trust to request additional information for ad valorem tax purposes.

(125) [(122)] Revenue Form 62A865, "Kentucky Intangible Property Tax - 1998 Margin Accounts" shall be sent by the department to the brokers maintaining an office in Kentucky notifying them of their intangible assessment.

(126) [(123)] Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates", shall be sent by the Department of Revenue to the taxpayer notifying him of the assessed value of intangible property in the settlement of an estate.

(127) [(124)] Revenue Form 62A875, "Tangible Business Situs for Kentucky Intangible Tax Purposes", shall be filed by intangible property owners with the Department of Revenue in order to determine if the property has a Kentucky taxable business situs

(128) [(125)] Revenue Form 62A876-A, "Omitted Intangible Property List", shall be filed by the owner of intangible property with the Department of Revenue in order to report for taxation previously omitted property.

(129) [(126)] Revenue Form 62A878, "Omitted Intangible Worksheet", shall be used by the Department of Revenue to list and assess omitted intangible property. This worksheet shall be sent to the property owner.

(130) [(127)] Revenue Form 62A880, "Omitted Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him of the value assessed by the department as well as all applicable penalties and interest

(131) [(128)] Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(132) [(129)] Revenue Form 62B002, "Unmined Coal Tax Notice (Lessee)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property

(133) [(130)] Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(134) [(131)] Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", shall be sent by the Department of Revenue notifying the taxpayer of the value of his interest in omitted unmined coal property.

(135) [(132)] Revenue Form 62B011, " Limestone, Sand, and Gravel Tax Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

(136) [(133)] Revenue Form 62B012, "Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in oil property.

(137) [(134)] Revenue Form 62B013, "Clay Property Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in clay property.

(138) [(135)] Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in undeveloped oil and gas property.

(139) [(136)] Revenue Form 62B015, "Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

(140) [(137)] Revenue Form 62B016, " Flourspar Property Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

(141) [(138)] Revenue Form 62B808, "Omitted Intangible Property Listing Request Letter", shall be sent by the Department of Revenue to the owner of intangible property in which the department has reason to believe has been omitted or undervalued on the tax rolls.

(142) [(139)] Revenue Form 62F002, "Appeals Process for Personal Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on personal property.

(143) [(140)] Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

(144) [(141)] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

(145) [(142)] Revenue Form 62F020, "Deeds/Transfers and Property Taxes", shall be an informational brochure on Kentucky's property tax system, sales and transfers of property and the requirements for preparing a deed.

(146) [~~(143)~~] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer wished to appeal his assessment on real property

(147) [~~(144)~~] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions [~~Agricultural Credit Associations and Banks for Cooperatives~~] for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 15. Racing Taxes - Required Forms. Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", shall be used by race tracks licensed by the Kentucky Racing Commission to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 16. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101, "Sales and Use Tax Permit", shall be conspicuously displaced by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(3) Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for particular reporting penod.

(4) Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet", shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(5) Revenue Form 51A103E, "Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(6) Revenue Form 51A104, "Six (6) Percent Sales Tax Collection Bracket" shall be used by a Kentucky sales and use tax permit holder to compute the correct amount of sales and use tax due on the amount of sales.

(7) Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property purchased from the seller will be:

(a) Resold in the regular course of business;

(b) Leased or rented; or

(c) Used as raw material, industrial supply or industrial tool.

(8) Revenue Form 51A109, "Application for Energy Direct Pay Authorization" shall be filed with the Department of Revenue by a manufacturer; processor, miner or refiner to apply for an energy direct pay authorization.

(9) Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(10) Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(11) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(12) Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases subject to Kentucky use tax

(13) Revenue Form 51A113(0), "Consumer's Use Tax Return - Nonregistered Filer" shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(14) Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Department of Revenue by anyone who wishes to order sales selected sales and use tax forms, regulations and informational circulars.

(15) Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(16) Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services

(17) Revenue Form 51A127, "Out-of-State Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that has previously qualified for exemption in their state or residence and previously provided proof of such exemption to the Sales and Use Tax Section, Kentucky Department of Revenue to claim exemption from sales and use tax on its purchases of tangible personal property.

(18) Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate" shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(19) Revenue Form, 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount sales and use tax paid based upon previous estimates of tax due.

(20) Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carrier", must be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(21) Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", must be completed by aviation fuel dealers selling jet fuel in order to determine the sales and use tax collected on the sale of jet fuel.

(22) Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used in the activity of transporting property or in conveying persons for hire.

(23) Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(24) Revenue Form 51A150, "Aircraft Exemption Certificate" shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(25) Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", shall be presented in duplicate to a retailer by an enterprise zone qualified business to claim exemption from sales and

use tax on the purchase of machinery and equipment to be used in a designated enterprise zone.

(26) Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of building materials to be used in remodeling, rehabilitation, or new construction in an enterprise zone.

(27) Revenue Form 51A153, "Certificate of Exemption for On-Farm Chicken or Livestock Raising Facilities", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of on-farm facilities used exclusively for raising poultry or livestock.

(28) Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV) Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs, and in addition the person making delivery of the tangible personal property shall complete the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(29) Revenue Form 51A155, "Certificate of Exemption for Ratite Bird Production", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of ratite birds, eggs, and supplies used in this agriculture pursuit.

(30) [~~(28)~~] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(31) [~~(29)~~] Revenue Form 51A158, "Farm Exemption Certificate", shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, ratites, buffalo or aquatic organisms to claim exemption from sales and use tax on the purchase of certain tangible personal property

(32) [~~(30)~~] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the initial construction of on-farm facilities exempt under the provisions of KRS 139.480.

(33) [~~(31)~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be used by the owner of a motor vehicle qualifying for the repair and replacement part exemption provided under KRS 139 480(32) to directly report and pay to the Department of Revenue sales and use tax that would have been remitted to the department by suppliers had the truck part direct pay authorization not been issued.

(34) [~~(32)~~] Revenue Form 51A161, "Truck Part Direct Pay Authorization", shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(35) [~~(33)~~] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", shall be filed annually by motor carriers using the truck part direct pay authorization to report purchases of repair and replacement parts for motor vehicle for the previous calendar year.

(36) [~~(34)~~] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

(37) [~~(35)~~] Revenue Form 51A209, "Sales and Use Tax Refund Application", shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(38) [~~(36)~~] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(39) [~~(37)~~] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(40) [~~(38)~~] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(41) [~~(39)~~] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(42) [~~(40)~~] Revenue Form 51A227, "Certificate of Resale (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold provided the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(43) [~~(41)~~] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(44) [~~(42)~~] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(45) [~~(43)~~] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(46) [~~(44)~~] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with filming and producing motion pictures in Kentucky.

(47) [~~(45)~~] Revenue Form 51A250, "Application for Transient Merchant Permit", shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(48) [~~(46)~~] Revenue Form 51B105A, "Sales and Use Tax Return Inquiry", shall be a form that is completed by the Department of Revenue to request additional information from a Kentucky sales and use tax permit holder regarding a sales and use tax return.

(49) [~~(47)~~] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax Notification", shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(50) [~~(48)~~] Revenue Form 51F009, "Purchase Exemption Notification", shall be issued by the Department of Revenue to a resi-

dent nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax

(51) [(49)] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

Section 17. Severance Taxes - Required Forms. (1) Revenue Form 55A001, "Application for Certificate of Registration for Coal Severers and/or Processors" shall be used by the Department of Revenue to register businesses that sever or process coal.

(2) Revenue Form 55A003, "Certificate of Registration-Severance Taxes", shall be used by the Department of Revenue to register coal severance taxpayers

(3) Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(4) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(5) Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Continuation)", shall be used by the taxpayer to report additional coal sales if there is not room on the return.

(6) Revenue Form 55A100D, "Coal Tax Return - Keep This Copy", a replica of the Coal Tax Return shall be completed by the taxpayer and retained in his files for informational purposes.

(7) Revenue Form 55A100D, " Part IV - Schedule of Coal Sales - Keep This Copy (continuation)", a replica of the Schedule of Coal Sales (Continuation) shall be completed by the taxpayer and retained in his files for informational purposes.

(8) Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(9) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(10) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(11) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(12) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(13) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(14) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(15) Revenue Form 56A107, "Schedule A, Allocations of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(16) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(17) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(18) Revenue Form 56A110, "Attachment C [Schedule C, Minerals Tax Return,] Computation of [Tax on] Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due

(19) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(20) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(21) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporter's who wish to acquire an account number with the Kentucky Department of Revenue.

Section 18. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fee and to report the number of waste tires received from customers.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Administrative - referenced material.

1. Revenue Form KY-1345, "Handbook for Electronic Filers of Individual Income Tax Returns, Tax Year 2004 [2003]", October, 2004 [2003];

2. Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;

3. Revenue Form 10A020, "Waiver of Appeal Rights", January, 2001;

4. Revenue Form 10A070, "Authorization Agreement for EFT", January, 1999;

5. Revenue Form 10A100, "Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", February, 2005 [October, 2002];

6. Revenue Form 10A100CS, "Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee]", February, 2005 [July, 2004];

7. Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application [for Withholding, Corporation, Sales Sales and Use Taxes, and Motor Vehicle Tire Fee]", February, 2005 [October, 2002],

8. Revenue Form 10A100CS-I, "Instructions for Kentucky Tax Registration Application [for Withholding, Corporation, Sales and Use Taxes]", February, 2005 [July, 2004];

9. Revenue Form 10A100-S, "Kentucky Tax Registration Supplemental Information Schedule", October, 2002;

10. Revenue Form 10A101, "Kentucky General Business Application", October, 1994;

11. Revenue Form 10A170, "Request For Notification of Administrative Regulation Filing", August, 2003;

12. Revenue Form 10A700, "Kentucky Tax Amnesty Application", July, 2002;

13. Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", June, 2004 [May, 2004];

14. Revenue Form 10F710, "Important Information Regarding Your Tax Amnesty Application", July, 2002;

15. Revenue Form 12A012, "Receipt of Seized Property", November, 1989;

16. Revenue Form 12A018, "Kentucky Revenue Cabinet Offer in Settlement", August, 2004 [March, 2000];

17. Revenue Form 12A104, "Notice of Seizure", October,

1982;

18. Revenue Form 12A107, "Notice of Sale", October, 1996;

19. Revenue Form 12A109, "Release of Levy", October, 1996,

20. Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", October, 1996,

21. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", December, 2003;

22. Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", October, 1996;

23. Revenue Form 12A501, "Certificate of Subordination of Kentucky Revenue Tax Lien", October, 1996;

24. Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", January, 2005 [~~April, 2002~~];

25. Revenue Form 12A503, "Application for Specific Lien Release", January, 2005 [~~April, 2002~~],

26. Revenue Form 12A504, "Personal Assessment of Corporate Officer", August, 1996;

27. Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer", August, 1996;

28 Revenue Form 12A506, "Waiver Extending Statutory Period for Collections", August, 1996;

29. Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", August, 1996;

30. Revenue Form 12A508-1, "Notice of Assessment", October, 1996;

31. Revenue Form 12A509, "Notification of Delinquent Taxpayer", October, 1996;

32. Revenue Form 12A510, "Guidelines for Wage Levy Processing", August, 1996;

33 Revenue Form 12A511, "Guidelines for Bank Levy Processing", August, 1996;

34. Revenue Form 12A512, "Confidential Agent Appointment", October, 1996;

35. Revenue Form 12A513, "Nexus Questionnaire", October, 1996;

36. Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", August, 1996;

37. Revenue Form 12A516, "Requirements for Agreed Judgments", October, 1996;

38. Revenue Form 12A517, "Notice of State Tax Lien", October, 1996;

39. Revenue Form 12A518, "Certificate of Release of Tax Lien", October, 1996;

40. Revenue Form 12A519, "Proof of Claim", October, 1996;

41. Revenue Form 12A638, "Statement of Financial Condition for Individuals", July, 2004 [~~August, 2003~~];

42. Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", August, 2004 [~~2003~~];

43. Revenue Form 12A639, "Statement of Financial Condition for Businesses", August, 2004 [~~January, 1997~~];

44. Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August, 2004 [~~January, 1997~~];

45. Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", October, 1996;

46. Revenue Form 12B020, "Notice of Levy", October, 1996;

47. Revenue Form 21A020, "Request for Copy of Tax Refund Check", June, 1988;

48. Revenue Form 21A050, "Business Account Numbers", January, 1997;

49. Revenue Form 31A001, "Vendor Contact Authorization", March, 1989;

50. Revenue Form 31A004, "Auditor Record of Money Receipt Issued", February, 2004;

51. Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", January, 2004;

52. Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", February, 2004;

53. Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", February, 2004 [~~January, 2003~~];

54. Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", September, 2004 [~~November, 1992~~],

55. Revenue Form 31A685, "Authorization to Examine Bank Records", May, 1985;

56. Revenue Form 31A725, "Statute of Limitations Agreement", September, 2004 [~~February, 2004~~];

57. Revenue Form 42F102, "Large Employer Program Electronic File Fact Sheet", August, 1996,

(b) Alcoholic beverage - referenced material:

1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", March, 1992;

2. Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", February, 1985;

3 Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", December, 1986;

4 Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", October, 1986;

5. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", August, 1996;

6. Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", July, 1986;

7. Revenue Form 73A535, "Report on Destruction of Alcoholic Beverages", January, 1991;

8. Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", January, 1995;

9. Revenue Form 73A576, "Vintner's Wine Report", June, 1998;

10. Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", June, 1998,

11. Revenue Form 73A626, "Brewer's Monthly Report Schedule", July, 1985;

12. Revenue Form 73A627, "Beer Distributor's Monthly Report", January, 1989,

13. Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", June, 1992,

14. Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", June, 1992;

(c) Bank franchise - referenced material

1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", December, 2004 [~~October, 2000~~];

2. Revenue Form 73A801, "2004 [~~2003~~] Bank Franchise Tax Return", December, 2004 [~~2003~~],

3. Revenue Form 73A801I, "2004 [~~2003~~] Kentucky Bank Franchise Tax Forms and Instructions Packet", December, 2004 [~~2003~~];

4. Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", December, 2004 [~~2003~~];

(d) Cigarettes - referenced material:

1. Revenue Form 73A181, "Cigarette Licenses Application", June, 2001;

2. Revenue Form 73A190, "Cigarette License", April, 1988;

3. Revenue Form 73A404, "Cigarette Tax Stamps Order Form", June, 2004;

4. Revenue Form 73A406, "Cigarette Tax Credit Certificate", November, 1990;

5. Revenue Form 73A409, "Cigarette Evidence/Property Receipt", November, 2003;

6. Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler and Wholesaler's Monthly Report of Nonparticipating Manufacturers Cigarettes Sold in Kentucky", June, 2002;

7. Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler", June, 2002;

(e) Corporation income and license - referenced material:

1. Revenue Form 41A720, "Form 720, 2004 [~~2003~~] Kentucky Corporation Income and License Tax Return", October, 2004 [~~2003~~];

2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation", October, 2004 [~~2003~~];

3. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October, 2004 [~~2000~~];

4. Revenue Form 41A720CI, "Schedule CI, Application for Coal Incentive Tax Credit [~~Report~~]", December, 2004 [~~January, 2002~~];

5. Revenue Form 41A720ES, "Form 720ES, 2005 [~~2004~~]

Kentucky Corporation Income Tax Estimated Tax Voucher", September, 2004 [August, 2003],

6. Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", October, 2004 [2000],

7. Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October, 2004 [2000];

8. Revenue Form 41A720I, "Instructions, 2004 [2003] Kentucky Corporation Income and License Tax Return", October, 2004 [2003];

9 Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", December, 2004,

10 Revenue Form 41A720QR (K-1), "Schedule QR (K-1), Pro Rata/Distributive Share of Approved Qualified Research Facility Tax Credit", December, 2004,

11 Revenue Form 41A720RC, "Schedule RC, "Application for Income Tax Credit for Recycling and/or Composting Equipment", October, 2004 [2003],

12 [10.] Revenue Form 41A720RC(C), "Schedule RC - Part I Continuation", October, 2004 [2000];

13 [11.] Revenue Form 41A720RC (K-1), "Schedule RC (K-1), "Pro Rata/Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit", October, 2004 [2003],

14 [12.] Revenue Form 41A720S, "Form 720S, 2004 [2003] Kentucky S Corporation Income and License Tax Return", October, 2004 [2003];

15. [13.] Revenue Form 41A720S1, "2004 [2003] Kentucky Corporation Income and License Tax Forms and Instructions Packet", October, 2004 [2003],

16. [14.] Revenue Form 41A720S2, "2004 [2003] Kentucky S Corporation Income and License Tax Forms and Instructions Packet", October, 2004 [2003];

17. [15.] Revenue Form 41A720-S4, "Instructions for Filling Corporation Estimated Income Tax Voucher", October, 2004 [2003];

18 [16.] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (for a KREDA Project of C Corporations)", December, 2004 [2002];

19. [17.] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", December, 2004 [2002];

20. [18.] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for a KREDA Project of S Corporations or Partnerships)", December, 2004 [2002],

21. [19.] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for a KIDA Project of C Corporations)", 2004 [2003];

22. [20.] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", December, 2004 [2002];

23. [21.] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for a KIDA Project of S Corporations or Partnerships)", December, 2004 [October, 2000].

24. [22.] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for a KIRA Project of C Corporations)", December, 2004 [2002];

25. [23.] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", December, 2004 [1998];

26. [24.] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax [Credit] Computation Schedule (for a KIRA Project of S Corporations or Partnerships)", December, 2004 [2002],

27. [25.] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for a KJDA Project of C Corporations)", December, 2004 [October, 2000];

28. [26.] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", December, 2004 [2002];

29. [27.] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for a KJDA Project of S Corporations or Partnerships)", December, 2004 [October, 2000];

30. [28.] Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More Than One (1) Economic Development Project)", December, 2004 [October, 2000];

31. [29.] Revenue Form 41A720-S31, "2004 [2001] Kentucky Schedule K for S Corporations with Economic Development Project(s)", November, 2004 [October, 2003];

32. [30.] Revenue Form 41A720-S32, "Schedule KIRA-L, Tax Credit Computation Schedule, License Tax (For a KIRA Project of Corporations", December, 2002;

33. Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of C Corporations)", December, 2004;

34 Revenue Form 41A720-S36, "Schedule KRA-L, Tax Credit Computation Schedule License Tax (For a KRA Project of Corporations)", December, 2004,

35. Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", December, 2004;

36. [31.] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of C Corporations)", December, 2004 [2002],

37. [32.] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of S Corporations or Partnerships, December, 2004 [2002];

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3. Revenue Form 71A102, "Questionnaire", August, 2000;

4. Revenue Form 71A103, "Application for Protective Refund of Motor Vehicle Usage Tax Used Vehicles Purchased Out of State", January 2001;

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14. [15.] Revenue Form 61A200Q, "Supplemental Report of Operations for Contained and Residential Landfills", November, 2004 [October, 2003].

15 [16.] Revenue Form 61A200R, "Report of Property Subject to the Pollution Control Tax Exemption", November, 2004 [January, 2003];

16 [17.] Revenue Form 61A200S, "Filing Requirements for Commercial Passenger and Cargo Airlines", November, 2004 [October, 2003];

17. [18.] Revenue Form 61A200T, "Report of Reseller Leasing Form", November, 2004 [October, 2003].

18 [19.] Revenue Form 61A200U, "Industrial Revenue Bond Property", November, 2004 [October, 2003].

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20 [21.] Revenue Form 61A202, " Public Service Company Property Tax Return for Railroad Car Line", November, 2004 [October, 2003].

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22 [23.] Revenue Form 61A207, "2005 [2004] Nonresident Watercraft Property Tax Return", November, 2004 [2003];

23. [24.] Revenue Form 61A207I, "Instructions - 61A207", November, 2004 [2003].

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25 [26.] Revenue Form 61A209, "Public Service Company Sales [Sale Form]", November, 2004 [October 2003];

26. [27.] Revenue Form 61A210, "Cable Television Company Sales", November, 2004 [October, 2003].

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34. [35.] Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", November, 2004 [2003];

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37. [38.] Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", November, 2004 [2003];

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40. [41.] Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice";

41. [42.] Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax - Second Notice";

42. [43.] Revenue Form 62A008, "Motor Vehicle Tax Notice - Delinquent";

43. [44.] Revenue Form 62A010, "Notice for Boat Transfer";

44. [45.] Revenue Form 62A013, "Application for Assessment Moratorium Certificate", September, 1982;

45. [46.] Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification";

46. [47.] Revenue Form 62A016, "Quietus";

47 [48.] Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills";

48 [49.] Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate";

49 [50.] Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts";

50 [51.] Revenue Form 62A020, "Intercounty Property Tax Collections";

51. [52.] Revenue Form 62A023, "Application for Exemption from Property Taxation", December, 1999.

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53 [54.] Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", January, 1998,

54 [55.] Revenue Form 62A030, "Request for Reproduction of PVA Public Records", May, 2002;

55 [56.] Revenue Form 62A037, "Mail Back Card Department of Property Valuation", April, 1998;

56 [57.] Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", February, 2000;

57. [58.] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax" July, 2001;

58. [59.] Revenue Form 62A050, "Application for Property Tax Refund", October, 2002;

59 [60.] Revenue Form 62A200, "2005 [2004] Unmined Coal Property Tax Information Return", December, 2004 [2003].

60. [61.] Revenue Form 62A200A, "Schedule A Fee Property Ownership", December, 2004 [2003].

61. [62.] Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", December, 2004 [2003];

62 [63.] Revenue Form 62A200C, "Schedule C Leased Property", December, 2004 [2003];

63 [64.] Revenue Form 62A200D, "Schedule D Property or Stock Transfers", December, 2004 [2003].

64. [65.] Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers and Assignments", December, 2004 [2003];

65 [66.] Revenue Form 62A200F, "Schedule F Farm Exceptions to Unmined Mineral Tax [Geological Information by County]", December, 2004 [2003].

66. [67.] Revenue Form 62A200G, "Schedule G Geological Information by County", December, 2004 [2003];

67. [68. Revenue Form 62A200H, "Schedule H Farm Exception to Unmined Minerals Tax", December, 2003;

69.] Revenue Form 62A302, "Property Information Request Regarding Assessment Appeal", May, 2002;

68 [70.] Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", January, 2001;

69 [71.] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes", January, 2001;

70. [72.] Revenue Form 62A307, "Property Owner Conference Record", May, 1992;

71. [73.] Revenue Form 62A310, "Summary of Bonds Held by Kentucky Residents", September, 2004 [October, 2002];

72. [74.] Revenue Form 62A310-S1, "Corporation Report of Bonds Held by a Kentucky Resident", September, 2004 [October 2002];

73. [75.] Revenue Form 62A311, "Life Insurance Proceeds Summary Report ", September, 2004 [October, 2002];

74. [76.] Revenue Form 62A311-S1, "Life Insurance Proceeds Report", September, 2004 [October, 2002];

75 Revenue Form 62A320, "Broker's Report of Margin or Cash Accounts of Kentucky Residents", January, 2005;

76 Revenue Form 62A320-S1, "Kentucky Margin Accounts", January, 2005;

77. Revenue Form 62A320-S2, "Kentucky Cash Accounts", January, 2005;

78. [77.] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", September, 2004 [October, 2002];

79 [78.] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", December, 1998;

80. [79.] Revenue Form 62A352, "Notice to Real Property

Owner of Assessment by Property Valuation Administrator", January, 2000;

81. [80.] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", December, 2000;

82. [81.] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", September, 2000,

83. [82.] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", January, 2001;

84. [83.] Revenue Form 62A365, "Nonresidency Affidavit", November, 2002;

85. [84.] Revenue Form 62A366, "Order Correcting Erroneous Assessment", January, 2000;

86. [85.] Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", August, 1992,

87. Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", October, 2004;

88. Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", February, 2005;

89. [86.] Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", April, 2002;

90. [87.] Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", April, 2002;

91. [88.] Revenue Form 62A376, "Intangible Property Tax Return", October, 2004 [2003];

92. [89.] Revenue Form 62A376I, "Instructions Intangible Property Tax Return", October, 2004 [2003];

93. [90.] Revenue Form 62A378, "Report of Location of Mobile Homes", January, 2001;

94. [91.] Revenue Form 62A379, "Listing of Omitted Real Property", December, 2003,

95. [92.] Revenue Form 62A384, "Oil Property Tax Return", January, 2002;

96. [93.] Revenue Form 62A384C, "Clay Property Tax Return", January, 2005 [2000];

97. [94.] Revenue Form 62A384C(I), "Instructions for Completing Clay Property Tax Return for 2005 [2002] Tax Year", December, 2004 [January, 2002],

98. [95.] Revenue Form 62A384F, "Flourspar Property Tax Return", January, 1998;

99. [96.] Revenue Form 62A384G, "Natural Gas Property Tax Return", January, 2005 [2004],

100. [97.] Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", January, 2005 [2000];

101. [98.] Revenue Form 62A384O, "Oil Property Tax Return Lease Report", January, 2005 [2004]

102. [99.] Revenue Form 62A385-A, "Sheriff's Receipt for Unpaid and Partially Paid Tax Bills", July, 2002;

103. [100.] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", August, 2003;

104. [101.] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections" December, 1996,

105. [102.] Revenue Form 62A398, "Property Valuation Administrator's Bond", August, 2002;

106. [103.] Revenue Form 62A399, "Notice to Appear in Circuit Court", August, 1983;

107. [104.] Revenue Form 62A400, "Notice of Distraint", August, 1983;

108. [105.] Revenue Form 62A401, "Final Notice Before Distraint", August, 1983;

109. [106.] Revenue Form 62A405, "Notice of Sale of Tax Bill", October, 1991;

110. [107.] Revenue Form 62A500, "2005 [2004] Tangible Personal Property Tax Return", September, 2004 [October, 2003];

111. [108.] Revenue Form 62A500A, "2005 [2004] Tangible Personal Property Tax Return for Aircraft", September, 2004 [October, 2003];

112. [109.] Revenue Form 62A500C, "Consignee Tangible Personal Property Tax Return", September, 2004 [October, 2003];

113. [110.] Revenue Form 62A500L, "Lessee Tangible Personal Property Tax Return", September, 2004 [October, 2003]

114. [111.] Revenue Form 62A500W, "2005 [2004] Tangible Personal Property Tax Return (Documented Watercraft) [for Non-Kentucky Registered Watercraft and Documented Watercraft]", October [February], 2004;

115. [112.] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", September, 2004 [October, 2002],

116. [113.] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", September, 2004 [October, 2002];

117. [114.] Revenue Form 62A601-S1, "Schedule A [Computation of] Apportionment Factor [for Foreign Savings and Loans]", September, 2004 [March, 1999],

118. [115.] Revenue Form 62A601-S2, "Influence Amount Schedule B Computation of Exempt Securities", September, 2004 [October, 2002],

119. [116.] Revenue Form 62A850, "Bank Deposits Tax Return", September, 2004 [October, 2002],

120. [117.] Revenue Form 62A861, "Schedule 1 Summary of Deposits", June, 2000;

121. [118.] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", September, 2004 [March, 1999];

122. [119.] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", September, 2004 [October, 2002];

123. [120.] Revenue Form 62A863-A, Schedule A, Summary of Deposits as of June 30, 20 ", September, 2004 [October, 2003];

124. [121.] Revenue Form 62A864, "Trust Questionnaire", March, 1999;

125. [122.] Revenue Form 62A865, "Kentucky Intangible Property Tax - Margin Accounts", March, 1999;

126. [123.] Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates", March, 1999;

127. [124.] Revenue Form 62A875, "Tangible Business Situs for Kentucky Intangible Tax Purposes", March, 1999;

128. [125.] Revenue Form 62A876-A, "Omitted Intangible Property List", September, 2004 [November, 2002];

129. [126.] Revenue Form 62A878, "Omitted Intangible Worksheet", March, 1999;

130. [127.] Revenue Form 62A880, "Omitted Personal Property Assessment", February, 2004;

131. [128.] Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)", March, 2002;

132. [129.] Revenue Form 62B002, "Unmined Coal Tax Notice (Lessee)", March, 2002;

133. [130.] Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)", March, 2002;

134. [131.] Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", March, 2002;

135. [132.] Revenue Form 62B011, "Limestone, Sand, or Gravel Tax Notice", March, 2002;

136. [133.] Revenue Form 62B012, "Oil Assessment Notice", March, 2002;

137. [134.] Revenue Form 62B013, "Clay Property Assessment Notice", March, 2002;

138. [135.] Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice", March, 2002;

139. [136.] Revenue Form 62B015, "Gas Assessment Notice", March, 2002;

140. [137.] Revenue Form 62B016, "Flourspar Property Assessment Notice", March, 2002;

141. [138.] Revenue Form 62B808, "Omitted Intangible Property Listing Request Letter", March, 1999;

142. [139.] Revenue Form 62F002, "Appeals Process for Personal Property Assessments";

143. [140.] Revenue Form 62F003, "Appeals Process for Real Property Assessments";

144. [141.] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", May, 2002;

145. [142.] Revenue Form 62F020, "Deeds/Transfers and Property Taxes";

146. [143.] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", January, 2000;

147. [144.] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions [Agricultural Credit Associations and Banks for Cooperatives] for Intangible Property Tax Purposes", September, 2004 [October, 2002];

(o) Racing - referenced material: Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", June, 2003;

(p) Sales and use - referenced material

1. Revenue Form 51A101, "Sales and Use Tax Permit", September, 2004 [~~January, 1980~~];

2 Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet", July, 2004 [~~January, 2004~~];

3. Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", July, 2004 [~~January, 2004~~],

4. Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet", July, 2004 [~~January, 2004~~];

5 Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", July, 2004 [~~January, 2004~~];

6 Revenue Form 51A104, "Six (6) Percent Sales Tax Collection Bracket", July, 1990;

7. Revenue Form 51A105, "Resale Certificate", January, 2005 [~~September, 1990~~];

8. Revenue Form 51A109, "Application for Energy Direct Pay Authorization", March, 2005 [~~July, 1982~~];

9. Revenue Form 51A110, "Direct Pay Authorization", August, 1997;

10. Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", March, 2005 [~~1996~~];

11. Revenue Form 51A112, "Application for Direct Pay Authorization", March, 2005 [~~December, 1997~~];

12. Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", July, 2004 [~~2003~~].

13. Revenue Form 51A113(0), "Consumer's Use Tax Return - Nonregistered Filer", July, 2004;

14. Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", January, 2005 [~~August, 1998~~],

15. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", February, 1993;

16. Revenue From 51A126, "Purchase Exemption Certificate", August, 2004 [~~June, 1992~~];

17. Revenue Form 51A127, "Out-of-State Exemption Certificate", June, 1988;

18. Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March, 2005 [~~May, 2001~~];

19. Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", March, 2005 [~~May, 1992~~];

20. Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of [~~for~~] Qualified Certificated Air Carrier", July, 2004 [~~2000~~];

21. Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", July, 2004 [~~August, 2003~~],

22. Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March, 2005 [~~February, 1983~~];

23. Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", March, 2005 [~~December, 1994~~],

24, Revenue Form 51A150, "Aircraft Exemption Certificate", January, 2005 [~~August, 1986~~];

25. Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", January, 2005 [~~December, 2003~~];

26. Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", January, 2005 [~~December, 2003~~];

27. Revenue Form 51A153, "Certificate of Exemption for On-Farm Chicken or Livestock Raising Facilities", March, 2005;

28 Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January, 2005 [~~February, 1997~~];

29 Revenue Form 51A155, "Certificate of Exemption for Ratite Bird Production", March, 2005;

30 [~~28.~~] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", April, 1998;

31. [~~29.~~] Revenue Form 51A158, "Farm Exemption Certificate", January, 2005 [~~June, 1998~~];

32. [~~30.~~] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", January, 2005 [~~June, 1998~~];

33. [~~31.~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March, 2005 [~~October 2003~~];

34 [~~32.~~] Revenue Form 51A 161, "Truck Part Direct Pay Authorization", October 2003,

35 [~~33.~~] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", October 2003;

36. [~~34.~~] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", January, 2005 [~~October, 2003~~],

37 [~~35.~~] Revenue Form 51A209, "Sales and Use Tax Refund Application", March, 2005 [~~August, 2001~~];

38 [~~36.~~] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March, 2005 [~~August, 2001~~].

39 [~~37.~~] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", June, 1980,

40. [~~38.~~] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July, 1980;

41 [~~39.~~] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March, 2005 [~~April, 2001~~];

42. [~~40.~~] Revenue Form 51A227, "Certificate of Resale (Schools)", August, 1984;

43. [~~41.~~] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", January, 1987,

44 [~~42.~~] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January, 1987;

45 [~~43.~~] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", February, 1987;

46 [~~44.~~] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", January, 1987;

47. [~~45.~~] Revenue Form 51A250, "Application for Transient Merchant Permit", August, 1998;

48. [~~46.~~] Revenue Form 51B105A, "Sales and Use Tax Return Inquiry", November, 1995;

49 [~~47.~~] Revenue Form 51F008, "Federal Government Exemption From Kentucky Sales and Use Tax Notification", December, 1998;

50. [~~48.~~] Revenue Form 51F009, "Purchase Exemption Notification", December, 1998;

51. [~~49.~~] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", December, 1998;

(q) Severance - referenced material:

1. Revenue Form 55A001, "Application for Certificate of Registration for Coal Severers and/or Processors", December, 2003;

2. Revenue Form 55A003, "Certificate of Registration - Severance Taxes", August, 1996;

3. Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", August, 1997;

4. Revenue Form 55A100, "Coal Tax Return", January, 2001;

5. Revenue Form 55A100, "Schedule of Coal Sales (Continuation)", July, 2000;

6. Revenue Form 55A100D, "Coal Tax Return Keep This Copy", August, 1988;

7. Revenue Form 55A100D, "Part IV - Schedule of Coal Sales Keep this Copy (continuation)", August, 1988;

8. Revenue Form 55A101, "Coal Tax Return Instructions", February, 2004;

9. [~~8.~~] Revenue Form 55A131, "Credit Memorandum", May, 1997;

10 [~~9.~~] Revenue Form 55A209, "Severance Tax Refund Application", May, 1997;

11. [~~10.~~] Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October, 1984;

12. [~~11.~~] Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", August, 1999;

13. [~~12.~~] Revenue Form 56A101, "Minerals Tax Return", September, 1996;

14. [~~13.~~] Revenue Form 56A106, "Minerals Tax Certificate of Exemption", April, 1997;

15. [~~14.~~] Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer",

January, 2005 [August, 2003];

16. [15.] Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", March, 2005 [September, 1994];

17. [16.] Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", January, 2005 [August, 1985];

18. [17.] Revenue Form 56A110, Minerals Tax Return Attachment C "[Schedule C, Minerals Tax Return,] Computation of Tax on Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", March, 2005 [August, 2000],

19. [18.] Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", June, 1998,

20. [19.] Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November, 1997,

21. [20.] Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", February, 2001; and

(r) Waste tire - referenced material. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", February, 2001.

(2) This material [These documents] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. FARRIS, Deputy Secretary for
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: May 10, 2005
FILED WITH LRC: May 12, 2005 at noon
CONTACT PERSON: Edward A. Mattingly, Director, Division of Legislative Services, Department of Revenue, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone 502 564-6843, extension 4431, fax (502) 564-9565, Email eddie.mattingly@ky gov

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(As Amended at ARRS, July 12, 2005)

201 KAR 9:018. Physician advertising.

RELATES TO: KRS 311.597(2) [311.530-311.620], 311.990
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation delineates limits of permissible professional advertising with the aim of adequately informing the public about physician services while at the same time establishing safeguards to protect the public or any member thereof from false, fraudulent, misleading, deceptive, self-laudatory or unfair statements.

Section 1. [This administrative regulation shall apply to all physicians licensed to practice medicine or osteopathy in the Commonwealth. It shall apply in regard to all advertising of whatever type and wherever published.

Section 2.] Advertising may be by any medium provided that the advertisement shall not be [is not in any manner] fraudulent, misleading or deceptive.

Section 2. [3.] The following may not be advertised:

(1) Testimonials of patients as to the physician's skill or the quality of his or her professional services;

(2) Claims regarding the physician's experience, competency and quality of services which imply that he or she possesses an exclusive and unique skill or remedy;

(3) Claims which cannot be readily verified by objective standards; and,

(4) Any representation expressly prohibited under KRS 311.597(2).

Section 3.(1) [4.] An advertisement may be sent to an individual addressee only if that addressee is one of a class of persons, other than a family to whom it is sent at the same time.

(2) An advertisement may not be sent to an addressee if prompted or precipitated by a specific event or occurrence involving or relating to the addressee as distinct from the general public

Section 4. [5.] (1) A licensee may only advertise that the licensee is "board certified" if the certifying board advertised by the licensee is:

(a) A member of the American Board of Medical Specialties (ABMS);

(b) A member of the Bureau of Osteopathic Specialties and Board of Certification; or

(c) A board that has been determined, by a subcommittee of the Board of Medical Licensure comprised of members appointed by the president to require:

1. Identifiable training in the relevant specialty or subspecialty field within a program accredited [certified] by the Accreditation Council for Graduate Medical Education or its equivalent; and

2. Satisfactory completion of a comprehensive psychometrically-validated examination in the specialty or subspecialty field

(2)(a) In making its determination, the subcommittee may rely on factual findings by the licensing authority of another state that the certifying board under consideration meets those requirements

(b) Before making its determination, the subcommittee shall [will] publish notice of the request in the board's newsletter, which shall contain the following information:

1. [(a)] The name and address of the board making the request,

2. [(b)] A brief summary of the training and testing qualifications supplied by the requesting board in support of its request;

3. [(c)] The name of any state licensing authority that has previously approved alternate certification for the requesting board, and

4. [(d)] Notice that physicians licensed by this board shall have sixty (60) [will have sixty (60)] days from a stated date in which to file written comments for consideration by the subcommittee.

(c) (3) The subcommittee shall [will] consider any written comments received pursuant to this notice before making its determination [and/or is equivalent to member boards of the ABMS.]

Section 5. [6.] Violation of any provision of this administrative regulation shall [will] be considered dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof pursuant to KRS 311.595(8) and 311.597(2).

DANNY M. CLARK, President
APPROVED BY AGENCY: April 21, 2005
FILED WITH LRC: May 12, 2005, at 10 a.m.
CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-8046, fax (502) 429-9923.

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(As Amended at ARRS, July 12, 2005)

201 KAR 30:150. Education provider approval.

RELATES TO: KRS 324A.035(3)(d),(f), 12 U.S.C. 3331-3351
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.

Section 1. Definitions. (1) "Approved Instructor" means an Instructor who has been approved under 201 KAR 30:160 to teach continuing education on qualifying education.

(2) "Education provider" means a school or organization that

teaches continuing education courses, programs, or seminars required by 201 KAR 30 050 or qualifying education courses required by 201 KAR 30 050 and 201 KAR 30.190

~~[(2) "Approved instructor" means an instructor who has been approved under 201 KAR 30:160 to teach continuing education or qualifying education.]~~

Section 2. Education Provider Approval. (1) To apply for approval as an real estate appraiser education provider or to renew approval, a provider shall submit a

(a) Completed Application for Real Estate Appraiser Education Provider, including the information required concerning curriculum, approved instructors, educational materials and policies;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or the Kentucky Department of Education, if applicable;

(c) Sample schedule outlining how a course will be presented, and

(d) Completed course outline for each course, which shall include

1. A Real Estate Appraisal Instructor Application for each instructor, as required by 201 KAR 30:160;

2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements,

3. A copy of the written material, including the textbook and other materials that will be used in the classroom;

4. A sample copy of a education provider brochure or information sheet promoting the education provider;

5. A copy of legal documentation required to support an answer made on the form, if applicable; and

6. A sample copy of an official transcript from the education provider.

(2) An approved real estate appraisal education provider shall include a statement in the education provider's application for admission into the program that [which] informs the prospective students that a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board. Failure to include this notification may result in suspension of an approved education provider's approval until the information is included in the application.

Section 3. Requirements for an Approved Education Provider. (1) [~~(3)~~] An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.

(2) [~~(4)~~] A renewal application shall be submitted by June 30 of each year.

(3) [~~(5)~~] The curriculum offered by the education provider shall:

(a) Include a minimum of two (2) academic hours for a continuing education course;

(b) Include a minimum of fifteen (15) academic hours, including examination time, for each qualifying education course;

(c) Be conducted for a maximum of no more than eight (8) hours during a twenty-four (24) hour period; and

(d) Consist of courses covering the topics listed by the Real Estate Appraisers Board in 201 KAR 30:050, Section 3, or 201 KAR 30:190.

(4) [~~(6)~~] An approved real estate appraisal education provider shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include:

1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and

2. A board-approved Certificate of Completion form for each student and proof that it was mailed to each student upon completion of a course.

(b) A permanent record shall:

1. Be maintained for five (5) years; and

2. Include student attendance records and test scores.

(c) The education provider shall submit to the board ~~[within ten (10) days of the completion of each course]~~ a roster with the names of the individuals who attended the course and each student's final examination grade with numerical score within ten (10) days of the completion of each course.

(5) [~~(7)~~] An approved real estate appraisal education provider shall file with the board a Notification Form for Course Dates and Locations no later than ten (10) days prior to beginning a qualifying education course or a continuing education class

(6) [~~(8)~~] An approved real estate appraisal education provider shall permit an inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.

(7) [~~(9)~~] Education provider status approval shall be withdrawn if the board determines that

(a) Information contained on the application or renewal is inaccurate or misleading;

(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;

(c) The instruction is so deficient as to impair the value of the course; or

(d) The education provider failed to meet any policy or statement made in its application.

(8) [~~(11)~~] If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within thirty (30) days.

(9) [~~(12)~~] An effort made directly or indirectly by a education provider, official or employee, or a person on their behalf to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations shall result in immediate revocation of education provider approval.

Section 4. [~~3.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Approved Real Estate Appraisal Education Provider", (2005);

(b) "Course Outline", (2005);

(c) "Certificate of Completion", (2005); and

(d) "Notification Form for Course Dates and Locations" (2005).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive #120, Lexington, Kentucky 40509, Monday through Friday, 8 a.m. to 4:30 p.m.

C W. WILSON, Chair

APPROVED BY AGENCY: May 13, 2005

FILED WITH LRC: May 13, 2005 at noon

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.

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(As Amended at ARRS, July 12, 2005)

201 KAR 30:160. Standards for instructors.

RELATES TO: KRS 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of the course taught by an instructor.

Section 1. Approval of Instructor. (1) To apply for approval as an instructor at an approved real estate appraisal education provider, an instructor shall submit the following:

(a) A completed Real Estate Appraiser Instructor Application;

(b) A copy of a current resume or curriculum vitae;

(c) A copy of legal documentation required to support an answer, if applicable; and

(d) A completed course outline for each course.

(2) An instructor shall have

(a) A baccalaureate degree or higher in real estate, business, law, finance or education from a college or university duly accredited by a nationally recognized accrediting organization; [or]

(b) An associate degree in real estate from a college or university duly accredited by a nationally recognized accrediting organization; [or]

(c) Completed five (5) consecutive years full-time experience, with an average of at least twenty (20) hours per week, in the real estate appraisal related subject area that he or she is teaching; or

(d) A combination of teaching, education, and full-time experience, averaging at least twenty (20) hours per week for each year of experience, in real estate appraisal totaling five (5) years.

(3) An instructor shall possess.

(a) A thorough familiarity of the provisions of KRS 324A, 201 KAR Chapter 30, and their effect on the subject area of the course;

(b) A thorough knowledge of the subject area of the course he or she is teaching, including property type and proper appraisal methods and techniques applicable to the subject area; and

(c) A thorough familiarity with the current edition of the Uniform Standards of Professional Appraisal Practice;

(4) An instructor for courses that are specific to the certified general real property appraiser level shall be a certified general real property appraiser in good standing.

(5) An instructor for courses that are specific to the certified residential real property appraiser level or the licensed real property appraiser level shall be a certified general real property appraiser in good standing or a certified residential real property appraiser in good standing.

Section 2. Withdrawal of Approval. Approval of an instructor may be withdrawn by the board for:

(1) A violation of a provision of KRS 324A.050 or an administrative regulation promulgated by the board that results in the suspension or revocation of his or her certification;

(2) Falsification of material submitted to the board to become an approved instructor;

(3) Falsification of a student's hours of attendance or grades in a course;

(4) Failure to be present in the classroom or leaving the classroom management in the supervision of an instructor not approved by the board to teach the class;

(5) Failure to provide to any materials requested by the board;

(6) Improper conduct or incompetence in instruction as evidenced by:

(a) Negative evaluations under 201 KAR 30.170,

(b) Excessive pass or failure rates in a course; or

(c) Negative evaluation by a board representative who has observed the course.

Section 4. Only an approved instructor shall teach a qualifying education course offered by an approved education provider or a mandatory continuing education course.

Section 5. All approved instructors shall:

(1) Be approved by the board and be in compliance with the provisions this administrative regulation; and

(2) Observe and enforce the guidelines for classroom management as part of the education program.

Section 6. Uniform Standards of Professional Appraisal Practice courses. (1) Prior to teaching any course entitled "Uniform Standards of Professional Appraisal Practice" as a qualifying education course or a continuing education course, the instructor shall be an appraiser qualifications board certified USPAP instructor.

(2) Instructors applying to teach any course titled "Uniform Standards of Professional Appraisal Practice" qualifying education course or continuing education course shall.

(a) Submit to the board a copy of appraiser qualifications board- certified USPAP instructor approval certificate which includes the instructor approval number and the date of course completion; and

(b) Proof that the instructor is currently in good standing with the appraisers qualifications board national instructor approval program.

(3) If the instructor is a certified real property appraiser, he shall submit proof of good standing in all jurisdictions in which he holds a credential of certified general real property appraiser or a certified residential real property appraiser.

(4) Instructors previously certified by the appraiser qualifications board national instructor program to teach USPAP who have failed to renew the certification at the time of application to the Real Estate Appraisers Board and who are not in good standing with the appraiser qualifications board or not in good standing with all state appraiser regulatory agencies in which the instructor is certified shall [will] not be approved to teach qualifying education or continuing education courses.

(5) USPAP instructors shall comply with the generally accepted principles of education (GAPE) developed by the Real Estate Educators Association.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Real Estate Appraiser Instructor Application", (2005);

(b) "Guidelines for Classroom Management", (2005); and

(c) "Generally Accepted Principles of Education (GAPE)", (2005).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, #120 Lexington, Kentucky 40509, Monday through Friday, 8 a.m. to 4:30 p m.

C.W WILSON, Chair

APPROVED BY AGENCY: May 13, 2005

FILED WITH LRC: May 19, 2005 at noon

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.

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(As Amended at ARRS, July 12, 2005)

201 KAR 30:170. Evaluation of Instructors.

RELATES TO: KRS 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for evaluation of instructors.

Section 1. Evaluation Forms. (1) Each continuing education provider shall distribute a Continuing Education Instructor Evaluation Form to each student.

(2) Within ten (10) days of the conclusion of each course, the education provider shall collect the Continuing Education Instructor Evaluation Form for each student enrolled in the course and shall submit the forms to the board at the Real Estate Appraisers Board's office.

(3) If an education provider fails to submit the forms to the students, the board may suspend the education provider's approval.

Section 2. Review of evaluation forms. (1) Continuing Education Evaluation Forms shall [will] be reviewed by the board in the following manner:

(a) The Real Estate Appraisers Board Education Director or the board designee shall review the course approval percentage rating, averaging all ratings, for each instructor;

(b) An eighty-five (85) percent rating is required in the categories of "Instructor Knowledge" and "Instructor Presentation";

(c) The comments section of the Continuing Education Evalua-

tion Form shall [will] be reviewed for other remarks concerning the instructor's performance, and

(d) If an instructor receives an average [a] rating lower than eighty-five (85) percent in the categories of "Instructor Knowledge" and "Instructor Presentation" from two (2) courses taught within a twelve (12) month period, the board shall [will] notify the instructor and the course provider of the deficiency

(2) In any class with ten (10) or fewer participants for which the instructor receives at least one (1) evaluation below eighty-five (85) percent, the board shall not consider the highest and lowest course approval percentage rating in order to ensure greater accuracy in the rating.

(3) After a deficiency notice, the instructor may be monitored by a board representative to determine the instructor's knowledge or the course's content and ability as an instructor

(4) The board monitor shall submit a recommendation to the board as to whether the instructor should be allowed to continue to teach courses

(5) Based upon the recommendation of the monitor, the evaluation score and the comments from the third class, a recommendation shall [will] be made to the board to:

(a) Take no further action;

(b) Suspend the approval of the instructor; or

(c) Place the instructor on probation pending the evaluation and review of a future class.

(6) In the event the board issues a probationary statement, the board shall outline the length and terms of the probationary period as well as the date of the class to be monitored.

(7) At the conclusion of the probationary period, the Real Estate Appraisers Board Executive Director shall recommend to the board whether the instructor's approval shall continue.

(8) The Real Estate Appraisers Board shall consider the Executive director's recommendations in determining whether the instructor's approval shall continue or be removed.

(9) The board shall notify the instructor and the school of its decision in writing.

(10) If probation has ended satisfactorily, the instructor's approval will be reinstated.

(11) If the board determines that the instructor's approval shall be suspended, the instructor shall not be allowed to teach any board-approved education courses unless approval is reinstated.

(12) The annual recertification of instructors and continuing education courses shall [will] include an in-depth review of the evaluations completed by the students and those of any monitor who may have been present for the class.

Section 3. Reinstatement. (1) Any instructor who has been suspended from teaching continuing education courses may [can] apply for reinstatement by submitting a request for approval to the board.

(2) If the deficiency that resulted in the suspension was related to presentation, the instructor shall attend an instructor development workshop approved by the board.

(3) If the deficiency that resulted in the suspension was related to the lack of knowledge of the subject matter, the instructor shall attend a prescribed number of credit hours in that subject approved by the board and successfully pass the examination for the course.

(4) The request for reinstatement shall include:

(a) Proof of attendance at any required courses; and

(b) Written documentation outlining other steps taken to improve the instructor's knowledge and skills.

(5) After submission of the above documents and consideration by the board, the board shall approve or deny the instructor's request for reinstatement in its discretion.

Section 4. Incorporation by Reference. (1) "Instructor Evaluation Form", (2005), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, #120 Lexington, Kentucky 40509, Monday through Friday, 8 a.m. to 4:30 p.m.

C.W. Wilson, Chair

APPROVED BY AGENCY: May 13, 2005

FILED WITH LRC: May 13, 2005 at noon

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.

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(As Amended at ARRS, July 12, 2005)

201 KAR 30:180. Distance education standards.

RELATES TO. 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A 035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A 035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional process which is presented through the use of computer technology, satellite transmission or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means any organization or individual offering continuing education courses via computer technology, satellite transmission or optical fiber transmission.

[(3) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.]

Section 2. Limitations On Distance Education Courses. (1) Distance education course approval shall be [is] available only to courses for continuing education under 201 KAR 30:050, Section 7.

(2) Distance education course approval shall not be [is not] available for qualifying education under 201 KAR 30.050, Sections 2 and 3, or 201 KAR 30:190.

(3) Distance education courses that involve less than two (2) hours of credit shall not be approved.

(4) Distance education shall not be allowed for the Appraiser Qualification Board National Uniform Standards of Professional Appraisal Practice seven (7) hour update or the fifteen (15) hour class or their equivalent content as approved by the Appraisers Standard Board of the Appraisal Foundation.

Section 3. Standards for Distance Education Course Approval. (1) To qualify for continuing education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

(a) The "Distance Education Course Application"; and

(b) The "Distance Education Instructor Application".

(3) Board approval shall be given to a distance education course which the board finds to provide [provides] competent instruction in real estate appraisal so as to establish, maintain and increase the student's skill, knowledge, and competency in real estate appraising.

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation [for compliance with currently accepted appraisal standards as endorsed by appropriate regulatory agencies and professional appraisal organizations and compliance with this administrative regulation].

(5) Course reviewers.

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field

2. The appraisal content reviewers shall consist of one (1) educator who is academically qualified in appraisal subjects and one (1) member who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval for each continuing education course being applied for approval by the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraisal Foundation.

(7) Every distance education course shall include a final examination that is:

(a) Administered after the completion of the course by a proctor approved by the board in accordance with the provisions of Section 5 of this administrative regulation; and

(b) A comprehensive assessment of the student's overall mastery of the materials presented in the course.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for continuing education courses delivered via distance education may be obtained from the following.

(a) A college or university;

(b) A community or junior college,

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission,

(e) A proprietary school; or

(f) An education provider approved by the board under 201 KAR 30:150.

(2) Credit may be granted for distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

(a) Ad valorem taxation,

(b) Arbitration;

(c) Business courses related to the practice of real estate appraisal;

(d) Development cost estimating;

(e) Ethics and standards of professional practice;

(f) Land use planning, zoning, taxation;

(g) Management, leasing, brokerage, timesharing;

(h) Property development;

(i) Real estate appraisal;

(j) Real estate financing and investment;

(k) Real estate law;

(l) Real estate litigation;

(m) Real estate related computer applications;

(n) Real estate securities and syndication; or

(o) Real property exchange.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with a minimum of five (5) years of experience and competency in the specific area of appraisal subject being taught;

(b) Not have been found by the board to have violated the requirements of KRS 324A.050 or the administrative regulations promulgated pursuant to KRS Chapter 324A [thereto];

(c) Submit copy of the instructor's curriculum vitae and appraisal certification.

(d) If instructors are changed or added, the credentials of the new instructors shall be submitted for approval before they can teach a course.

(2)(a) A proctor [Proctors] is the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same qualifications as those for distance instructors outlined in Section 5(1) above

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Affiliated with a real estate sales or real property appraisal office or business,

4. Related to the student by blood or marriage; or

5. Associated personal or business with the student either personally or by business relationship

(d) A proctor may be selected from many difference professions, including:

1. A university, college or community college professor or instructor;

2. A registered public librarian;

3. A public school administrator;

4. A Notary Public;

5. An attorney; or

6. Nominee of the provider approved by the board

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation with a picture ID, with another identification document, including driver's license, student ID card, or by familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work himself or herself without aids of any kind, including books, notes, conversation with others or any other external resource;

4. Verify that any calculator is a nonprogrammable hand-held calculator.

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination.

6. Provide the student with the URL for the course examination which shall be supplied by the provider when a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9. See that, if there is any interruption, the board is notified that the examination was interrupted, the reason for the interruption, and the board, or its designee, shall approve the request to resume.

10. Upon completion of the examination, submit a certificate which confirms that he or she verified the identity of the student, that the examination was completed on the date assigned during the time permitted, and that the student has done all the work himself or herself without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or web pages other than that displaying the examination.

Section 6. Course delivery medium. (1) All course delivery systems shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days to student lesson assignment, quiz submissions and inquiries;

(b) Student inquiry shall be [is] readily available and identified for general questions concerning the course;

(c) Provision for timely clarification of confusing points, errors in the study text or a combination of each;

(d) A student's activity in the course shall be reviewed by the instructor at least every thirty (30) days to assess progress and he shall determine the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery is used.

Section 7. Record Keeping and Reports. (1) The provider shall

furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Certification of Independent Study for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Proctor's Certification of the student's independent work and timely completion of the examination.

(4) A comprehensive evaluation of the student's overall on-line experience during the course shall be submitted at the conclusion of the course using board-approved forms or provider forms containing essentially the same evaluation criteria.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and a satisfactory score on the final examination containing, as a minimum, the information on the Real Estate Appraisers Board form.

Section 8. Fees. The following nonrefundable fees shall be paid in connection with distance education courses submitted for approval by the board.

(1) $200 for review of each distance education delivery system submitted for approval; and

(2) $150 for each individual course submitted for content and time delivery review and approval by the board.

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

(a) "Distance Education Course Approval", (2005);

(b) "Distance Education Student Independent Work Certification", (2005);

(c) "Distance Education Proctor's Examination Certification", (2005); and

(d) "Distance Education Course Evaluation", (2005).

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, #120 Lexington, Kentucky 40509, Monday through Friday, 8 a.m. to 4:30 p.m.

C.W. WILSON, Chair

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GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(As Amended at ARRS, July 12, 2005)

201 KAR 30:190. Educational requirements for certification effective January 1, 2008 [~~Education requirement for applications received after December 31, 2007~~].

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d) requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements promulgated by the Appraisers Qualifications Board. This administrative regulation establishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 7 of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions;

(e) Proprietary schools;

(f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour will be credited only for educational offerings with content that follows the Required Core Curriculum in Section 7 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only where:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If [~~Where~~] an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB [~~Appraiser Standards Board of the Appraisal Foundation~~].

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB [~~through the ASB~~] or by an alternate method established by the AQB [~~ASB~~].

Section 4. Qualifying education for Associate Real Property Appraiser effective January 1, 2008 [~~after December 31, 2007~~]. (1) Regardless of the applicant's accrual of experience or education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as a associate real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed seventy-five (75) class hours as specified in the Required Core Curriculum Section 7 of this administrative regulation.

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in section 3(7) of this administrative regulation.

Section 5. Qualifying education for Licensed real property appraisers effective January 1, 2008 [~~after December 31, 2007~~]. (1) Regardless of the applicant's accrual of experience or education

prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be [is] successful completion of 150 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination

Section 6. Qualifying education for certified residential real property appraisers certification effective January 1, 2008 [after December 31, 2007] (1) Regardless of the applicant's accrual of experience or education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be [is] completion of 200 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) An applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets; and
7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it will be accepted as credit for the college course.

Section 7. Qualifying education for Certified General Real Property Appraiser certification effective January 1, 2008 [after December 31, 2007]. (1) Regardless of the applicant's accrual of experience or education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be [is] completion of 300 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her [their] education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelors degree, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition,
2. Micro Economics;
3. Macro Economics;
4. Finance;
5. Algebra, Geometry, or higher mathematics;
6. Statistics;
7. Introduction to Computers-Word processing/spreadsheets,
8. Business or Real Estate Law; and
9. Two (2) elective courses in accounting, geography, age-conomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall [will] be accepted as credit for the college course.

Section 8. Effective January 1, 2008 [After December 31, 2007], the required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of seventy-five (75) class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 150 class hours.

(a) Basic appraisal principles- thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) Residential market analysis and highest and best use-fifteen (15) class hours.

(e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.

(f) Residential sales comparison and income approaches-thirty (30) class hours.

(g) Residential report writing and case studies-fifteen (15) class hours.

(3) Certified residential real estate appraiser consisting of 200 class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) Residential market analysis and highest and best use-fifteen (15) class hours.

(e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.

(f) Residential sales comparison and income approaches-thirty (30) class hours.

(g) Residential report writing and case studies-fifteen (15) class hours.

(h) Statistics, modeling and finance-fifteen (15) class hours.

(i) Advanced residential applications and case studies-fifteen (15) class hours.

(j) Appraisal subject matter electives-twenty (20) class hours.

(4) Certified general real estate appraiser consisting of 300 class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) General appraiser market analysis and highest and best use-thirty (30) class hours.

(e) Statistics, modeling and finance-fifteen (15) class hours.

(f) General appraiser site valuation and cost approach-thirty (30) class hours.

(g) General appraiser sales comparison approach-thirty (30) class hours.

(h) General appraiser income approach-sixty (60) class hours.

(i) General appraiser report writing and case studies-thirty (30) class hours.

(j) Appraisal subject matter electives-thirty (30) class hours

(5) The required core curriculum classes shall cover the topics set out in this subsection.

(a) Basic appraisal principles.

1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.

2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.

3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.

4. Types of value including market value and other value types.

5. Economic principles including classical economic principles and application and illustrations of the economic principles.

6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.

7. Ethics and how they apply in appraisal theory and practice

(b) Basic appraisal procedures.

1. Overview of approaches to value.

2. Valuation procedures.

a. Defining the problem;

b. Collecting and selecting data;

c. Analyzing;

d. Reconciling and final value opinion; and

e Communicating the appraisal.

3 Property description.

a. Geographic characteristics of the Land or [/]Site;

b. Geologic characteristics of the Land or [/]Site;

c. Location and neighborhood characteristics;

d. Land/site considerations for highest and best use, and

e. Improvements-architectural styles and types of construction.

4. Residential applications.

(c) The 15-Hour National USPAP Course or its equivalent.

1. Preamble and ethics rules.

2. Standard 1.

3. Standard 2.

4. Standards 3 to 10.

5. Statements and advisory opinions.

(d) Residential market analysis and highest and best use.

1. Residential markets and analysis.

a. Market fundamentals, characteristics and definitions;

b. Supply analysis;

c. Demand analysis; and

d. Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d. Market analysis; and

e. Case studies.

(e) Residential appraiser site valuation and cost approach.

1. Site valuation.

a. Methods; and

b. Case studies.

2. Cost approach.

a. Concepts and definitions;

b. Replacement or [/]Reproduction cost new;

c. Accrued depreciation;

d. Methods of estimating accrued depreciation; and

e. Case studies.

(f) Residential sales comparison and income approaches.

1. Valuation principles & procedures-sales comparison approach.

2. Valuation principles & procedures-income approach.

3. Finance and cash equivalency.

4. Financial calculator introduction.

5. Identification, derivation and measurement of adjustments.

6. Gross rent multipliers.

7. Partial interests.

8. Reconciliation.

9. Case studies and applications.

(g) Residential report writing and case studies.

1. Writing and reasoning skills

2. Common writing problems.

3 Form reports

4 Report options and USPAP compliance.

5 Case studies.

(h) Statistics, modeling and finance.

1. Statistics.

2. Valuation models (AVM's and mass appraisal).

3 Real estate finance.

(i) Advanced residential applications and case studies.

1. Complex property, ownership and market conditions

2. Deriving and supporting adjustments

3 Residential market analysis.

4. Advanced case studies.

(j) General appraiser market analysis and highest and best use

1. Real estate markets and analysis.

a. Market fundamentals, characteristics and definitions;

b. Supply analysis; and

c Demand analysis.

d Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d Market analysis, and

e. Case studies.

(k) General appraiser sales comparison approach.

1. Value principles.

2. Procedures.

3. Identification and measurement of adjustments.

4. Reconciliation.

5. Case studies.

(l) General appraiser site valuation and cost approach.

1. Site valuation.

a Methods; and

b. Case studies;

2. Cost approach.

a. Concepts and definitions;

b. Replacement or [/]Reproduction cost new;

c. Accrued depreciation;

d Methods of estimating accrued depreciation; and

e. Case studies;

(m) General appraiser income approach.

1. Overview.

2. Compound interest.

3. Lease analysis.

4. Income analysis.

5. Vacancy and collection loss.

6. Estimating operating expenses and reserves.

7. Reconstructed income and expense statement.

8. Stabilized net operating income estimate.

9. Direct capitalization.

10. Discounted cash flow.

11. Yield capitalization.

12. Partial interests.

13. Case studies.

(n) General appraiser report writing and case studies.

1. Writing and reasoning skills.

2. Common writing problems.

3. Report options and USPAP compliance.

4. Case studies.

C.W. WILSON, Chair

APPROVED BY AGENCY: May 13, 2005

FILED WITH LRC: May 13, 2005 at noon

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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, July 12, 2005)

401 KAR 4:010. Water withdrawal permits[;] criteria, reports.

RELATES TO: KRS 151.110, 151.112, 151.114, 151.116, 151.120, 151.182, 151.200, 151.210, 151.220 [~~151.140, 151.160~~]
STATUTORY AUTHORITY: KRS 151.125(1), (3), (4), (9), (10), 151.140, 151.150, 151.160, 151.170 [~~151.220, 224.01.110(6)(b), 224.10-100(17)~~]
NECESSITY, FUNCTION, AND CONFORMITY. **KRS 151.125(3) authorizes the cabinet secretary to adopt rules and regulations for water resources which he or she deems necessary to accomplish the purposes of KRS Chapter 151. KRS 151.125(4) authorizes the secretary to adopt rules and regulations with respect to procedural issues regarding water withdrawal permits.** This administrative regulation is necessary to establish the requirements for permits to withdraw water and the reporting procedure to be used in conjunction with water withdrawal permits issued by the Division of Water.

Section 1. The necessity for water withdrawal permits shall be determined according to the following criteria:

(1) If [~~Where~~] the average withdrawal rate is more than 10,000 gallons per day, a permit shall be required except as exempted by KRS 151.140[.]

(2) If [~~Where~~] the withdrawal of water is made at a relatively constant rate each day and the average withdrawal rate is 10,000 gallons per day, or less, no permit shall be required; or[.]

(3) If [~~Where~~] withdrawals are made on an irregular basis and at an irregular rate, permits may be required if [~~where the division determines that~~] the water withdrawn represents a significant portion of the available water supply or [~~that~~] collection of withdrawal data is necessary for water resource planning purposes.

Section 2. Permit Issue Date and Effective Date. (1) Each permit shall clearly show:

(a) An issue date, which shall be the date on which a permit is signed by the cabinet representative; and

(b) An effective date, which shall be the date on which a permitted withdrawal may begin.

(2) The issue date may be up to three (3) years in advance of the effective date.

(3) Water allocated by a permit that is issued more than six (6) months in advance of the effective date shall be reserved for use by that applicant if:

(a) The requested amount of water is available from the proposed water source;

(b) There remains an amount of water that may be allocated for other competing uses; and

(c) The applicant provides to the cabinet additional project information and quarterly status reports that document the continued viability of and progress toward the completion of the project by the permit's effective date.

1. This shall include:

(a) [~~1.~~] A proposal for securing financing of the project; and

(b) [~~2.~~] A project schedule with the anticipated dates for all major milestones. These milestones shall include:

(i) [~~a.~~] Funding approval;

(ii) [~~b.~~] Commencement of construction;

(iii) [~~c.~~] Site preparation;

(iv) [~~d.~~] Construction of major structural or project elements;

(v) [~~e.~~] Completion of construction; and

(iv) [~~f.~~] Commencement of project operations and water withdrawal.

2. Quarterly status reports shall address each milestone listed in subparagraph 1b of this paragraph. Reports shall be due thirty (30) days after the end of each calendar quarter following the issuance date of the permit.

(4) [~~(d)~~] For those permits having an issue date more than six (6) months in advance of the effective date, a project schedule may be amended and the permit's [~~permit~~] effective date extended up to one (1) year if the permittee demonstrates that circumstances beyond the control of the permittee have caused an unavoidable delay in the completion of the project.

(5) [~~(e)~~] For those permits having an issue date more than six (6) months in advance of the effective date, withdrawals shall begin no later than six (6) months after the effective date.

(6) [~~(f)~~] For those permits having an issue date more than six (6) months in advance of the effective date, a water withdrawal permit shall expire and become void if the holder of the permit fails to:

(a) [~~1.~~] Adhere to the project schedule as submitted at the time of permit issuance or as amended according to subsection (4) of this section;

(b) [~~2.~~] Comply with the interim reporting requirements; or

(c) [~~3.~~] Commence withdrawals within six (6) months after the permit effective date, including any extensions granted under subsection (4) of this section.

Section 3. Water Withdrawal Reporting Requirements. [~~(1)~~] Reports of water withdrawn pursuant to permit shall be made as follows:

(1) [~~(a)~~] Withdrawals made at a relatively constant daily rate shall be recorded daily [~~monthly~~] and reported to the division monthly [~~semiannually~~] on **the "Monitoring Results Submittal Form" and "Water Withdrawal Report Form," incorporated by reference in Section 4 of this administrative regulation** [~~forms supplied by the cabinet~~] [~~division~~].

(2) If [~~(b) Where~~] withdrawals are made on an irregular basis and at an irregular rate, the division may specify recording frequency as the circumstances require. Reporting of withdrawal information to the cabinet [~~division~~] shall be made monthly [~~semiannually~~]. Recording and reporting shall be done on **the "Monitoring Results Submittal Form" and "Water Withdrawal Report Form,"** [~~forms supplied by the cabinet. The forms are~~] incorporated by reference in Section 4 of this administrative regulation [~~division~~].

(3) Increased reporting or recording frequency of the rate or volume of a permitted water withdrawal may be required if:

(a) A water withdrawal may adversely impact other water users, water quality, or aquatic habitat based on:

1. Scientific documentation;

2. Monitoring data; or

3. An observed or documented impact; [~~or~~]

(b) The data is needed for water resources management or planning purposes; or

(c) There is insufficient data to determine the potential impacts of a water withdrawal. [~~If~~] [~~(c) Where~~] [~~necessary,~~] [in the discretion of the division][~~, increased reporting or recording frequency may be required.~~]

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

(a) "Monitoring Results Submittal Form, DEP 0056 (3/05)"; and

(b) "Water withdrawal report form, DEP 8058 (3/05)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p. m. [~~The permittee shall complete and return the water withdrawal report forms to the division within thirty (30) days after receiving such forms~~].

JOHN W. CLAY, Deputy Secretary
For LaJuana Wilcher, Secretary
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.
CONTACT PERSON: David W. Morgan, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, July 12, 2005)

785 KAR 1:130. GED eligibility requirements.

RELATES TO: KRS 151B.023, 151B 125, 158 6455
STATUTORY AUTHORITY: KRS 151B 023, 151B 410, EO 2005-565 [2004-726]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B 410(1) requires the Department for Adult Education and Literacy to promulgate necessary administrative regulations and administer a statewide adult education and literacy system through the state. KRS 151B 023 requires [designates] the Department for Adult Education and Literacy to carry out the statewide mission on adult education. [The department has the responsibility for all administrative functions of the state in relation to the management, control, and operations of programs and services in adult education and literacy.] KRS 151B.125 recognizes the General Educational Development (GED) Tests [test] for high school equivalency purposes in Kentucky EO 2005-725 [2004-726] abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondasry Education KRS 158.6455 excludes students from a school's dropout rate if the student is enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion of a GED diploma (known as the secondary GED program). This administrative regulation establishes the eligibility requirements for taking the GED Tests [test]

Section 1. Eligibility Requirements. The [Except as provided in Sections 2 and 3 of this administrative regulation, the] GED Tests [test] shall be administered to an applicant with a Kentucky address who:

(1) Has reached his 19th birthday; [or]

(2) Is at least sixteen (16) [seventeen (17)] years of age [,] and [-

(a)] has officially withdrawn from public or private school for ninety (90) days as certified by the local school district; or

(3) Is [and

(b) The applicant's last enrolled class has graduated; or

(c) The applicant has been out of formal instruction for a period of one (1) year.

Section 2. Exigent Circumstance. An applicant at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of Section 1 of this administrative regulation may request an exemption from the local school superintendent or designee in the district where the applicant resides. An exemption granted on the basis of exigent circumstances or a denial shall be in writing. A copy of all exigent circumstance decisions shall be mailed or faxed within five (5) working days of the decision to the state GED administrator. An applicant may appeal a denial by the local school superintendent to the Commissioner of the Department for Adult Education and Literacy.

Section 3. Exemptions. An applicant] at least sixteen (16) years of age with a Kentucky address, and is [shall be eligible to take the GED test if the applicant is]:

(a) [(1)] Committed or placed in a state correctional facility;

(b) [(2)] Enrolled in the Jobs Corps Program of Instruction;

(c) [(3)] Considered a state agency child, as defined by KRS 158.135(1)(a) and receives approval for the GED Tests [test] from his interdisciplinary team; [or]

(d) [(4)] Detained in a juvenile detention center or juvenile holding facility, and the applicant:

1. [(a)] Is at least one (1) year behind academically from his graduating class;

2 [(b)] Has a minimum stay in detention of thirty (30) days; and

3 [(c)] Is approved for the GED Tests [test] by the local school superintendent; or

(e) Enrolled in a Kentucky Department of Education approved Secondary GED Program under 704 KAR 7:150 and is approved for the GED Tests by the local school superintendent.

Section 2 Superintendent Waiver. The local school superintendent or designee in the district where the applicant was last enrolled may waive the ninety (90) day school withdrawal provision of Section 1(2) of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, or family circumstances. [Provided however, The local school superintendent may waive the ninety (90) day school withdrawal provision of Section 1(2) of this administrative regulation for an employment condition, postsecondary education enrollment, medical reason, or family circumstances.]

Section 3. [4.] Test Readiness. An applicant shall be certified as test-ready by an entity approved by Kentucky [a Department for] Adult Education [and Literacy designated entity].

(1) Before taking the official GED Tests [test], an applicant shall.

(a) Successfully complete the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Voucher; and [.]

(b) Complete the Kentucky Adult Education GED Testing [Test] [Testing] Application [Form]. This form shall be available from a county [local] adult education provider, [local] school district [superintendent], or the Kentucky [Department for] Adult Education [and Literacy].

(2) Military personnel shall.

(a) Not be required to complete the GED Test [Testing] Application [Form] prior to taking the test; and

(b) Complete the Military GED Application (Form 300-M) before a high school equivalency diploma shall be issued.

Section 4 [3.] [5.] Incorporation by Reference (1) The following material is incorporated by reference:

(a) Kentucky Adult Education GED Testing [Test] Application, June [April] 2005 ["GED Testing Application (DAEL-6)", revised 10/12/01 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy], and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 6/96 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, [the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: June 15, 2005
FILED WITH LRC: June 15, 2005 at 11 a m.
CONTACT PERSON: B.J. Helton, Senior Associate, GED Administrator, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, phone (502) 573-5114, ext. 102, fax (502) 573-5436, email: bj helton@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of State Fire Marshall
(As Amended at ARRS, July 12, 2005)

815 KAR 25:080. Requirements for certifying manufactured home installers.

RELATES TO: KRS 227.550, 227.560(1), 227.570, 227.580(1), (3), 227.590, 227.600(3), 227.630, 227.990
STATUTORY AUTHORITY: KRS 227.570(2), 227.590(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570(2) requires the office to enforce standards of installation, adopted by the Manufactured Home Certification and Licensure Board, as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the board to promulgate administrative regulations to establish the standards. This administrative regulation establishes the requirements

for certifying manufactured home installers [~~charges the board with establishing the standards and the office with enforcing state and federal law. This administrative regulation establishes requirements regarding the certification of installers~~]

Section 1. Definitions. (1)[~~"ANSI" means American National Standards Institute as referenced in ANSI A225.1, Manufactured Home Installations, 1994 Edition, incorporated by reference.~~

~~(2)~~] "Board" is defined in KRS 227.550(1).

(2) [~~(3)~~] "Certified installer" means the individual certified to install manufactured homes in Kentucky pursuant to this administrative regulation.

(3) [~~(4)~~] "Installation" means the work performed on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy, to:

(a) Include the following:

1. Permanent foundation;

2. Placement of polyvinyl covering on the ground, if applicable;

3. The placement and connection of utilities performed by appropriately-licensed contractors;

4. Anchoring/tying down; and

5. Other accessory or appurtenance specified in the sales contract; and

(b) Exclude the following:

1. Site preparation; or

2. For a single-section home, ground set after site preparation.

(4) [~~(5)~~] "Office" is defined in KRS 227.550(11).

(5) [~~(6)~~] "Permanent foundation" means a system of supports:

(a) Capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;

(b) Constructed of concrete; and

(c) Placed at a depth below grade adequate to prevent frost damage.

(6) [~~(7)~~] "Site preparation" means work performed on the land in preparation for installation of the home:

(a) Including:

1. Clearing and initial grading;

2 Water drainage; and

3. Vegetation control; and

(b) Excluding final grading after the home has been set.

Section 2. Requirements for Certification. (1) An applicant for certified installer shall:

(a) Submit to the office a completed Form MHCI 3;

(b) Pay an application fee of $100 to the office;

(c) Successfully complete fifteen (15) hours of an approved course of education;

(d) Provide written proof of regularly assisting in site preparation and installation functions:

1. [~~,~~] Under the supervision of a certified installer;

2. For at least sixty (60) days; and

3. On at least fifteen (15) homes;

(e) Pass the certified installer examination given by the office [~~approved by the board~~]; and

(f) Provide a certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the office and request an amended certificate which shall reflect the current status. If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or having in its employ a certified installer until another certified person has become associated with that company.

Section 3. Renewal of Certification; Continuing Education. (1) The installer certificate shall expire on the last day of the installer's birth month. If an initial certificate is [~~will be~~] for a period of less than twelve (12) months, the fee shall [~~may~~] be reduced on a pro rata basis [~~January 1 of each year~~].

(2) A certified installer seeking to renew certification shall:

(a) Submit a completed application, Form MHCI 3, to the office [~~department~~];

(b) Pay a renewal fee of fifty (50) dollars, and

(c) Provide proof of at least five (5) classroom hours successfully completed during the year, in a course offered by the Kentucky Manufactured Housing Institute [~~approved by the office~~] [~~department~~].

Section 4. Minimum Requirements for Installations. A certified installer shall:

(1) Install each manufactured home in accordance with KRS 227.570(3); and

(2) Use ANSI 225.1, Manufactured Home Installations, 1994 edition

Section 5. [~~Suspension and Revocation of Certification. The certificate of a certified installer may be revoked or suspended on the same grounds and by the same procedure as those provided for sanctions or revocation for licensed retailers in 815 KAR 25:050, Section 5(2) and (3).~~

~~Section 6.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ANSI A225.1, Manufactured Home Installations, 1994 Edition; and

(b) Form MHCI 3, Certified Installer Application, February, 2005 [~~2001~~].

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

LAJUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: February 24, 2005
FILED WITH LRC: March 15, 2005 at 11 a.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(As Amended at ARRS, July 12, 2005)

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

STATUTORY AUTHORITY: KRS 194.030(2) [~~194A.030(3)~~], 194A.050(1), 205.520(3), 205.560, 205.561(2) [~~205.561(4)~~], 205.6316(4), 2005 Ky. Acts ch. 99 [~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 99 [~~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. KRS 205.561(2) and 205.6316(4) require [~~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 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.

(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 Food and Drug Administration of the United States Department of Health and Human Services.

(7) "Gross amount due" means the total price of a drug claimed from all sources, which includes the ingredient costs, usual and customary charge, dispensing fee, and the incentive amount paid (if one (1) is paid) [and any other charges the pharmacy may add to the claim].

(8) "Weighted majority of volume purchase" means a calculation used in determining a state maximum allowable cost that is based on market share [cost paid and which may include the dispensing fee paid and or the incentive amount paid] ["Nonsolid dosage form" means a covered drug item other than an oral tablet, oral capsule, or inhaler].

(9) [(8)] "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 1:604, the reimbursement to the participating provider [for the dispensing fee] shall be reduced by one (1) dollar [the amount of the copayment].

(2) The department; [shall:]

(a) May establish a state maximum-allowable cost for a drug:

1. If two (2) or more A-rated therapeutically-equivalent, multisource, noninnovator 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. For example, if for a given drug there are two (2) therapeutically-equivalent drugs with one (1) priced at five (5) dollars per pill and possessing thirty (30) percent of the market share and the other priced at one (1) dollar per pill and possessing seventy (70) percent of the market share, the department shall [we will] factor in the market share in determining the state MAC price rather than simply averaging the two (2) prices; 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.

(3) An appeal of a state maximum-allowable cost price for a drug shall be as follows:

(a)1. The provider shall email or fax a completed "MAC Price Inquiries and Research Request Form" (which is available at the department and at the Web site address; http://kentucky.fhsc.com/providers/documents.asp, by clicking on "MAC Price Inquires and Research Request Form or via the specific Web site address: http://kentuckyfhsc.com/Downloads/providers/KYRx_MACResearchRequestForm.pdf) to First Health Services Corporation. The email address is rebate@fhsc.com and the fax number is 804-217-7911; or

2. The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;

(b) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days;

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum-allowable cost price;

(d) The state maximum-allowable cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum-allowable cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in paragraph (c) [subsection (3)(c)] of this subsection [section], or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider; and

(e) When the change in state maximum-allowable cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

[1. 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 sources 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://chs.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 [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 exemption 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) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

3. The estimated acquisition cost (EAC) which shall:

a. For a generic drug, equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition;

and

b. For a brand name drug, equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition;

4. The usual and customary billed charge; or

5. The gross amount due.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. 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; and

2. The lesser of:

a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;

b. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

c. The estimated acquisition cost (EAC), which shall:

(i) For a generic drug, equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition, and

(ii) For a brand name drug, equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition;

d. The usual and customary billed charge; or

e. The gross amount due [~~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 AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or~~

~~4. The usual and customary billed charge.~~

~~(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:~~

~~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.~~

~~(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 (AWP) 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.~~

~~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 (AWP) 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~~]

(e) [~~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 paragraph (c) [~~subparagraphs 2 and 3~~] of this subsection [~~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 one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:

1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;

2. The drug is a nonsolid dosage form, in which case one (1) additional dispensing fee shall be allowed;

3. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed; or

4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee [~~:~~

~~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 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.

(i)1. A maintenance drug shall be dispensed to an outpatient service recipient, except for an individual receiving supports for community living services, up to a ninety-two (92) day supply with only one (1) initial dispensing fee and one (1) refill dispensing fee allowed within the ninety-two (92) day time period unless the department determines that it is in the best interest of the recipient to allow any additional dispensations or dispensing fees; and

2. For an outpatient service [~~or personal care~~] recipient receiving services via the Supports for Community Living Program, there shall not be more than:

a. [~~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 clause c [~~subparagraph 3~~] of this subparagraph [~~paragraph~~];

b. [~~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

c.(i) [~~3.a.~~] Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a nonsolid dosage form [~~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

(ii) [~~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) For a 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 calendar month for a drug that is a nonsolid dosage form [~~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.

(k) [~~(j)~~] 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

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(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. 447.45.

(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.

(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall notify the department's fiscal agent of the third-party liability [~~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 submit [~~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 this section [~~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 and in accordance with KRS 205.561, [~~, 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)(d) [2(4)(e)] of this administrative regulation, shall be:

(a) Five (5) dollars [~~four (4) dollars and fifty-one (51) cents~~] per prescription for a generic 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; and

(b) Four (4) dollars and fifty (50) cents per prescription for a brand name 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 two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist [~~:~~

~~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 five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug [~~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)(d) [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; [~~or~~]

(b) The physician's usual and customary amount or 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.

Section 5. Incorporation [~~Material Incorporated~~] by Reference. (1) The "MAC Price Inquiries and Research Request Form", December 2004 edition [~~"~~], is incorporated by reference.

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

JAMES W. HOLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 9, 2005
FILED WITH LRC: June 10, 2005 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(As Amended at ARRS, July 12, 2005)

907 KAR 1:019. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), [~~EO 2004-726~~] [~~2003-064~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004 [2003-64, effective December 16, 2003]; 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 the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205 560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205 5632 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

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

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms [~~http://chs.ky.gov/dms~~].

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug list " means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, [~~and~~] drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, [~~or~~] drug categories, or related items and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(13) [~~"Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018 for a drug that has been designated as a maintenance drug in the department's drug list.~~

~~(14)~~] "Manufacturer" is defined in 42 U S C. 1396r-8(k)(5).

(14) [~~(15)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(15) [~~(16)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(16) [~~(17)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution. Federal law prohibits dispensing without prescription".

(17) [~~(18)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205 564.

(18) [~~(19)~~] "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered

(19) [~~(20)~~] "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(20) [~~(21)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) [~~(22)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A drug covered through the Outpatient Pharmacy Program shall be.

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) The department shall have a drug list which:

(a) Lists:

1. Drugs, [and] drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs, and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) Specifies covered vaccines;

(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(h) May be updated monthly or more frequently by the department; and

(i) Shall be posted on the department's Internet web site.

(3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug,

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. A drug if used to promote smoking cessation;

6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

7. An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

8. A barbiturate,

9. A benzodiazepine; [or]

10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

11. A drug utilized for erectile dysfunction therapy;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient [recipients] for the department to make payment for the drug and federal financial participation is available for the drug,

(d) Except in accordance with subsection (6) [(7)] of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required, or

(b) Except as prohibited in subsection (4) of this section, noncontrolled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; [or]

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) The prescription fill is for an outpatient service recipient, excluding an individual who is receiving supports for community living services in accordance with 907 KAR 1:145 [Effective March 1, 2005, a recipient demonstrates stability on a given maintenance drug, in which case, any subsequent fill of the maintenance drug shall be dispensed in a ninety-two (92) day supply].

(4) A prescription fill for an outpatient service recipient, excluding an individual receiving supports for community living services in accordance with 907 KAR 1:145, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient to dispense a smaller supply;

(b) The recipient is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill; or

(c) The recipient is expected to be covered under the Medicare Part D benefit effective January 1, 2006, and the dispensing occurs within ninety-two (92) days of January 1, 2006, the amount dispensed (and the amount that the department shall cover) shall equal the number of days between the dispensing and January 1, 2006. For example, if the dispensing occurs seventy-three (73) days prior to January 1, 2006, a seventy-three (73) day supply. If the dispensing occurs seventy-two (72) days prior to January 1, 2006, a seventy-two (72) day supply shall be dispensed and the department shall cover a seventy-two (72) day supply.

(5) [Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for maintenance drug dispensing fee exceptions if a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.

(5)] The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient [recipients] for the department to make payment for the compounded drug or compounded drug category.

(6) [(5)] [(6)] An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:

(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or

(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.

(7) [(6)] [(7)] If it is determined by the department to be in the best interest of a recipient [recipients], the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(8) [(7)] [(8)] A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient has been restricted.

(9) [(8)] [Effective March 1, 2005,] The department shall:

(a) Cover up to three (3) brand name prescriptions per recipient per month unless the department determines that it is in the best interest of the recipient to cover any additional brand name prescription; and

(b) Cover unlimited generic prescriptions per recipient per month in accordance with the requirements and limitations established [elsewhere] in this administrative regulation.

(10) [(9)] A refill of a prescription shall not be covered unless at least eighty (80) percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1) To request prior

authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, via the web-based application located at the Web site of http //kentucky fhsc com/providers/documents by mail, express-delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the web-based application located at the Web site of http //kentucky fhsc com/providers/documents A request shall be submitted in accordance with the following

(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving[:

~~1. Maintenance drug dispensing fee exceptions; or~~

~~2.~~] exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall.

1. Complete a Brand Name Drug Request Form;

2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested, and

3. Indicate on the Brand Name Drug Request Form: [-]

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) A Brand Name Drug Request Form shall not be required if:

1. It has been determined by the department to be in the best interest of a recipient [~~recipients~~] not to require completion of a Brand Name Drug Request Form; and

2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.

(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:

1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;

2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall

a. Request that the prescriber obtain prior authorization from the department, or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with subsection (1) of this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p m. EST; and

b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering.

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:

a. Submit a prior authorization request to the department's urgent fax number or to the department via the web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) and (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

(a) The prescription;

(b) The nursing facility order sheet; or

(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone, [~~or~~] fax or via the web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(6) Prior authorization of drugs for a Medicaid long-term care recipient [~~recipients~~] in a nursing facility [~~nursing facilities~~] shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall.

1. Not be exempted from prior authorization, or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205 5632.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following.

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient [recipients] for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's pharmacy director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 8(3) [9(3)] of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205 5639(5). The appeal request shall

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position;

2. A request to make a verbal presentation shall be submitted in writing via fax [FAX] or e-mail to the department with a copy to the chair of the P&T Committee no later than forty-eight (48) hours in advance of the P&T Committee meeting;

3. An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

4. A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1 a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pdf [pfd] format); or

b. Mailed to the department with a total of eighteen (18) copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205 564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person.

(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.

(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.

~~[Section 8. Drug Classes for P&T Committee Review. Following are the drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list:~~

~~Narcotics—Long Acting~~	~~Nondihydropyridine—Calcium Channel Blockers~~
~~Narcotics—Short and Intermediate Acting~~	~~Lipotropics—Nonstatins~~

~~Nonsteroidal Anti-inflammatory Drugs (Traditional NSAIDS)~~	~~Lipotropics – Statins~~
~~Nonsteroidal Anti-inflammatory – COX II Inhibitors~~	~~Platelet Inhibitors~~
~~Antifungals – Onychomycosis~~	~~Antianxiety – General~~
~~Antifungals – Oral~~	~~Antidepressants – Other than SSRI's~~
~~Antifungals – Topicals or Derm~~	~~Antidepressants – SSRI's~~
~~Antivirals – Herpes~~	~~Antipsychotics – Atypical~~
~~Antivirals – Influenza~~	~~Drugs for ADD~~
~~Cephalosporin – First Generation~~	~~Insulins~~
~~Cephalosporin – Second Generation~~	~~Oral Hypoglycemics – Alpha Glucosidase Inhibitors~~
~~Cephalosporin – Third Generation~~	~~Oral Hypoglycemics – Biguanides~~
~~Hepatitis C~~	~~Oral Hypoglycemics – Meglitinides~~
~~Macrolides~~	~~Oral Hypoglycemics – Second Generation Sulfonylureas~~
~~Quinolones First Generation~~	~~Oral Hypoglycemics – Thiazolidinediones~~
~~Quinolones Second Generation~~	~~Histamine-2 Receptor Antagonists (H2RA)~~
~~Quinolones Third Generation~~	~~Proton Pump Inhibitors (PPI)~~
~~Antihistamines – Second Generation~~	~~Nausea Agents (5HT3)~~
~~Beta Adrenergics – Short Acting~~	~~Glaucoma – Alpha-2 Adrenergics~~
~~Beta Adrenergics – Long Acting~~	~~Glaucoma – Beta Blockers~~
~~Beta Adrenergics for Nebulizers~~	~~Glaucoma – Prostaglandin Inhibitors~~
~~Inhaled Systemic Glucocorticoids~~	~~Glaucoma – Carbonic Anhydrase Inhibitors~~
~~Leukotriene Inhibitors~~	~~Glaucoma – Miscellaneous~~
~~Nasal Steroids~~	~~Osteoporosis Agents~~
~~ACE Inhibitors~~	~~Serotonin Receptor Agents~~
~~Angiotensin Receptor Antagonists~~	
~~Beta Blockers~~	
~~Dihydropyridine Calcium Channel Blockers]~~	

Section 8. ~~[9.]~~ Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. ~~[10.]~~ Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 10. ~~[11.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, ~~[January 30, 2003,]~~ edition"; and

(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, ~~[March 3, 2003,]~~ edition"; and

(c) "MAP-012802 PPI and H2 Blocker Request Form, October 18, 2004, ~~[March 3, 2004,]~~ 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.

SHANNON TURNER, Commissioner
DUANE L. KILTY JR., Ph.D., Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: May 10, 2005
FILED WITH LRC: May 10, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations
(As Amended at ARRS, July 12, 2005)

907 KAR 1:360. Preventive and remedial public health services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 431.615
STATUTORY AUTHORITY: KRS 194A.030~~(2)[(3)]~~, 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, c, d ~~[, EO 2004-726]~~
NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~ The Cabinet for Health 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 preventive and remedial public health services provided through the Department for Public Health and the method of reimbursement for these services by the Kentucky Medicaid Program.

Section 1. Definitions. (1) "Add-on code" means a designated CPT code which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) ~~["Billable unit" means a covered service designated by a unique CPT code.~~

~~(3)~~]"CPT code" means a code used for reporting procedures

and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.

(3) [(4)] "Department" means the Department for Medicaid Services or its designated agent.

(4) [(5)] "Incidental" means that a medical procedure:

(a) Is performed at the same time as a more complex primary procedure; and

(b)1. Requires few additional physician resources; or

2. Is clinically integral to the performance of the primary procedure.

(5) [(6)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(6) [(7)] "KenPAC" means the Kentucky Patient Access and Care System.

(7) [(8)] "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System

~~[(9) Medicaid Physician Fee Schedule" means a list of current reimbursement rates and procedure codes for physician services established by the department in accordance with 907 KAR 3:010, Section 3.]~~

(8) [(10)] "Medically necessary" or "Medical necessity" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) [(11)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in current procedural terminology as inappropriate coding of procedure combinations.

(10) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician's work, practice expense, and liability insurance.

(11) [(12)] "Screening" means the evaluation of a recipient by a physician to determine:

(a) The presence of a disease or medical condition; and

(b) The necessity of further evaluation, diagnostic tests or treatment.

Section 2. Participation Requirements. (1) The Department for Public Health shall comply with the terms and conditions established in the following administrative regulations:

(a) 907 KAR 1:005, Nonduplication of payments;

(b) 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions; and

(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(2) The Department for Public Health shall comply with the requirements regarding the confidentiality of personal medical records as mandated by 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

Section 3. Covered Services. The following medically-necessary preventive, screening, diagnostic, rehabilitative and remedial services provided by the Department for Public Health directly or indirectly through its subcontractors shall be covered:

(1) A chronic disease service;

(2) A communicable disease service;

(3) An early and periodic screening, diagnosis, and treatment (EPSDT) service;

(4) A family planning service;

(5) A maternity service; or

(6) A pediatric service.

Section 4. Service Limitations. (1) A laboratory procedure shall be limited to a procedure for which the provider has been certified in accordance with 42 C.F.R. Part 493.

(2) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F shall be covered within the scope and limitations of these federal regulations.

(3) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(4) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.

Section 5. Reimbursement (1) Payment for a preventive health service specified in Section 3(1) through (6) of this administrative regulation shall be calculated by multiplying the current Medicare conversion factor for Kentucky by the nonfacility relative value unit weight for the procedure code. [

~~(a) If provided by a physician, the reimbursement amount for the service specified in the Medicaid Physician Fee Schedule;~~

~~(b) If provided by a physician assistant or advanced registered nurse practitioner, a rate calculated at seventy-five (75) percent of the fee specified in the Medicaid Physician Fee Schedule, or~~

~~(c) If provided by a licensed nurse, a rate calculated at sixty (60) percent of the fee specified in the Medicaid Physician Fee Schedule.~~]

(2) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(3) If a copayment is required in accordance with 907 KAR 1:604, reimbursement shall be reduced by the amount of the copayment.

(4) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(5) Except for an applicable add-on code, reimbursement for an anesthesia service shall be limited to one (1) CPT code and one (1) unit of anesthesia per operative session.

(6) Reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service;

(c) A postoperative service and follow-up care:

1. Within ninety (90) days following the date of major surgery; or

2. Within ten (10) days following the date of minor surgery; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery.

Section 6. ~~[Supplemental Payments. In addition to a payment made pursuant to Section 5 of this administrative regulation, the department shall make a monthly supplemental payment which shall be the lesser of:~~

~~(1) An amount specified in an interagency agreement between the Department of Public Health and the department; or~~

~~(2) An amount which is the difference between:~~

~~(a) The most recently submitted state fiscal year costs as substantiated by local health department cost reports; and~~

~~(b) The amount of reimbursement generated by that state fiscal year's billable units based upon reimbursement rates assigned to the CPT codes in the Medicaid Physician Fee Schedule.~~

~~Section 7.~~] Audits. (1) The Department for Public Health or subcontracting local health departments shall provide to the Department for Medicaid Services or a representative of an agency or office listed in subsection (2) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; or

(c) Information documenting the cost of the service.

(2) Access to provider or subcontractor records relating to a service provided shall be required for:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Centers for Medicare and Medicaid

Services;
(c) The United States Attorney General's Office;
(d) The state Attorney General's Office;
(e) The state Auditor's office;
(f) The Office of the Inspector General; or
(g) An agent or representative as may be designated by the Secretary of the Cabinet for Health Services.

Section 7. [8.] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.
(2) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563
(3) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

JAMES W. HOLSINGER, JR., M.D., Secretary
DUANE L. KILTY, JR., Ph.D., Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: April 26, 2005
FILED WITH LRC: May 10, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

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

200 KAR 5:080. Sponsorships.

RELATES TO: KRS 45A.010, 45A.085, 45A.095
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 establishes the parameters under which an executive branch agency may enter into a written contract for sponsorship from a business under the Kentucky Model Procurement Code.

Section 1. Definitions. (1) "Agency" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive branch of government.

(2) "Business" is defined in KRS 45A.030(1).

(3) "Contract" is defined in KRS 45A.030(7).

(4) "Responsible bidder" is defined in KRS 45A.070(6).

(5) "Sponsorship" means a contract for the receipt of cash or noncash value by an agency from a business in exchange for advertising or similar commercial considerations, except for contractual agreements for naming rights.

Section 2. Sponsorship Opportunity. (1) A sponsorship opportunity shall be posted on the agency's website for a minimum of seven (7) calendar days in accordance with KRS 45A.085(2). In addition, a sponsorship opportunity may also be linked to other commonwealth Web sites, and awareness raised through other media, such as publication in newspapers and press releases.

(2) A sponsorship opportunity shall describe the number of potential sponsorships available, the relative importance of price and other evaluation factors used, and the advertising or similar commercial considerations available from the state for a particular sponsorship opportunity.

Section 3. Sponsorships. (1) At the end of the posting period for a sponsorship opportunity, the agency shall review all responses in accordance with the evaluation factors set forth in the sponsorship opportunity.

(2) Written or oral discussions may be conducted with responsible bidders in accordance with KRS 45A.085(7).

(3) Agency shall make award of sponsorship to the responsible bidder(s) determined in writing to be most advantageous to the commonwealth, taking into consideration the evaluation factors set forth in the sponsorship opportunity. All evaluation documentation, scoring, and summary conclusions of the award shall be made a part of the file record.

(4) If insufficient eligible responses are received in response to a sponsorship opportunity, the agency may noncompetitively negotiate directly with businesses under KRS 45A.095(1) for the remaining number of sponsorships available.

(5) A sponsorship shall not constitute an "official endorsement" of a particular company by the Commonwealth of Kentucky as the sole vendor of choice.

(6) An entity that has a business or regulatory relationship with the agency, or who may be lobbying or attempting to influence matters of that agency, may be considered for a sponsorship opportunity only if there is a clear benefit to the commonwealth, or the sponsorship promotes economic development or tourism in the commonwealth.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: July 5, 2005

FILED WITH LRC: July 5, 2005 at 3 p.m.
CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the parameters under which an executive branch agency may enter into a written contract for sponsorship from a business under the Kentucky Model Procurement Code.

(b) The necessity of this administrative regulation: Executive Branch agencies have requested guidance on how to enter into contracts for sponsorship in accordance with KRS Chapter 45A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to Executive Branch agencies and to the public, by establishing uniform procedures by which the commonwealth shall award contracts for sponsorship under KRS Chapter 45A.

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all state agencies, and all individuals, firms, organizations, and political subdivisions doing business with the commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation will assist the aforementioned groups to correctly understand the process by which the commonwealth may enter into contracts for sponsorship under KRS Chapter 45A.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied to this regulation, because all entities participating in this process will be treated equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Financial Standards and Examination
(Amended After Comments)

806 KAR 52:010. Forms for application, security deposits and financial statements.

RELATES TO: KRS 304.50 [2005 Ky Acts ch 7]
STATUTORY AUTHORITY: KRS 304.50-010, 304.50-030, 304.50-050, 304.50-060 [2005 Ky Acts ch 7, sec 2, 6, 10, 12]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010 [2005 Ky. Acts ch. 123 created the Office of Insurance 2005 Ky Acts ch. 7, sec. 2] requires the executive director to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups 304.50-030(1) [2005 Ky. Acts ch. 7, sec 6(1)] requires a workers' compensation self-insured group seeking initial certification to file an application on a form approved by the executive director. KRS 304.50-050(1) [2005 Ky. Acts ch 7, sec 10(1)] requires a workers' compensation self-insured group to provide a security deposit to the executive director on a form prescribed by the executive director. KRS 304.50-050(2) [2005 Ky Acts ch. 7, sec. 10(2)] allows trustees to file cash, cash equivalents, United States Treasuries or a bank letter of credit in satisfaction of the security deposit requirement, on a form prescribed by the executive director. KRS 304.50-060(4) [2005 Ky Acts ch. 7, sec 12(4)] requires workers' compensation self-insured groups to file statements of financial condition on a form prescribed by the executive director. This administrative regulation prescribes the required forms for application, security deposits and financial statements.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.
(2) "Office" means the Office of Insurance.
(3) "Self-Insured group" is defined in KRS 304.50-015(29) [2005 Ky. Acts ch. 7, sec 3(29)].

Section 2. (1) Pursuant to KRS 304.50-030(1) [2005 Ky Acts ch. 7, sec. 6(1)], Form 100, Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group, shall be completed and submitted to the executive director to apply for initial certification as a workers' compensation self-insured group.
(2) Pursuant to KRS 304.50-050(5) [2005 Ky. Acts ch. 7, sec. 10(5)], Form 141, Election Form for Designation of Custodian Bank for Safekeeping of Securities, shall be completed and submitted to the executive director to propose designation of a bank or trust company for the safekeeping of securities.
(3) Pursuant to KRS 304.50-050(2) [2005 Ky Acts ch. 7, sec. 10(2)], Form 142, Letter of Credit, shall be completed and submitted to the executive director when issuing a letter of credit in satisfaction of the security deposit requirement for a workers' compensation self-insured group.
(4) Pursuant to KRS 304.50(2) [2005 Ky. Acts ch. 7, sec. 10(2)], Form 145, Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks, shall be completed and submitted to the executive director when transferring funds in or out of the Safekeeping Account and shall be approved by the executive director before the bank can complete the transfer.
(5) Pursuant to KRS 304.50(2) [2005 Ky. Acts ch. 7, sec. 10(2)], Form 826, Safekeeping Agreement for Workers' Compensation Self-Insured Groups, shall be completed and submitted to the executive director when the self-insured group initially sets up the security account or when a group transfers the security deposit to another bank.
(6) Pursuant to KRS 304.50-060(4) [2005 Ky. Acts ch. 7, sec. 12(4)], the Workers' Compensation Self-Insured Group Quarterly Statement (Blank), shall be completed and submitted to the executive director to file a quarterly statement of financial condition. Form 102, Trustee Confirmation of Receipt, shall be completed by each trustee of the workers' compensation self-insured group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Office of Insurance within seventy-five (75) calendar days after the close of each quarterly reporting period.
(7) Pursuant to KRS 304.50-060(4) [2005 Ky. Acts ch. 7, sec. 12(4)], the Workers' Compensation Self-Insured Group Annual Statement (Blank), shall be completed and submitted to the executive director to file an annual statement of financial condition.
(8) Pursuant to KRS 304.50-050(1) [2005 Ky Acts ch. 7, sec. 10(1)], Form 147, Deposit Calculation for Workers' Compensation Self-Insured Groups, shall be completed and submitted annually to the executive director to calculate the correct amount to be placed in the Safekeeping Account.

Section 3 Incorporation by Reference (1) The following material is incorporated by reference:
(a) "Form 100 - Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group (2005)";
(b) "Form 141 - Election Form for Designation of Custodian Bank for Safekeeping of Securities (2005)";
(c) "Form 142 - Letter of Credit (2005)";
(d) "Form 145 - Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks (2005)",
(e) "Form 826 - Safekeeping Agreement for Workers' Compensation Self-Insured Groups (2005)";
(f) "Workers' Compensation Self-Insured Group Quarterly Statement (Blank) (July 15, 2005) [(2005)]";
(g) "Form 102 - Trustee Confirmation of Receipt (4/2005)";
(h) "Workers' Compensation Self-Insured Group Annual Statement (Blank) (July 15, 2005) [(2005)]"; and
(i) "Form 147 - Deposit Calculation for Workers' Compensation Self-Insured Groups (2005)".
(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, 8:00 a.m. to 4:30 p.m.
(3) Forms may also be obtained on the Office of Insurance Internet Web site at http://doi.ppr.ky.gov/kentucky/.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at noon
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, 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 prescribes the required forms for application for certification of a new workers' compensation self-insured group, security deposits and financial statements.
(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 304.50, which requires the executive director to prescribe forms for an application for initial certification as a workers' compensation self-insured group, security deposit requirements and quarterly and annual financial statements.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.50-010 requires the executive director to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups. Section 6(1) requires a workers' compensation self-insured group seeking initial certification to file an application on a form approved by the executive director. KRS 304.50-050(1) requires a workers' compensation self-insured group to provide a security deposit to the executive director on a form prescribed by the executive director. KRS 304.50-050(2) allows trustees to file cash, cash equivalents, United States Treasuries or a bank letter of credit in satisfaction of the security deposit requirement, on a form prescribed by the executive director. Finally, KRS 304.50-060(4) requires workers' compensation self-insured

groups to file statements of financial condition on a form prescribed by the executive director. This regulation prescribes the forms required by those statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes This administrative regulation prescribes the required forms to insure that complete, comparable information is filed for review and analysis by the Office of Insurance.

(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 amended after comments regulation amends the filed regulation by correcting grammatical and formatting errors, adding clarifying language, and removing superfluous language in the quarterly statement blank and the annual statement blank. Additionally, the citations to the 2005 Kentucky Acts have been updated to reflect the codified statutes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct errors that have been subsequently discovered on the incorporated forms. Additionally, as the new legislation has been codified, this amendment is necessary to update citations to reflect the statutory cites.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.50-060 requires workers' compensation self-insured groups to file statements of financial condition on a form prescribed by the executive director. This amendment corrects errors and adds clarifying language on the incorporated forms.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will clarify language to and correct errors discovered on the incorporated forms for the quarterly and annual financial statements. These corrections will assist those in completing and submitting the forms. Additionally, citations to the Kentucky Acts have been updated to reference the newly codified statutes, which will clarify the location of the statutes in the Insurance Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect the 7 existing workers' compensation self-insured groups and any entity desiring to file an initial application to become certified as a workers' compensation self-insured group.

(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: Workers' compensation self-insured groups will be required to utilize the forms prescribed by this regulation when making the statutorily required filings with the Office of Insurance.

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

(a) Initially: The cost will be minimal.

(b) On a continuing basis. There should be no additional 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees. 05 RS SB 86 established a filing fee of $600 for an application for a certificate of filing as a workers' compensation self-insured group.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all workers' compensation self-insured groups operating in Kentucky.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 2005

GENERAL GOVERNMENT CABINET
Board of Dentistry
(Amendment)

201 KAR 8:180. Applicant; requirements.

RELATES TO: KRS 313.040
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: Sets forth requirements and qualifications for those applying to this board for licensure.

Section 1. (1) All examinations must be conducted in the English language.

(2) All applicants for licensure must be graduates of a Commission on Dental Accreditation (CODA) accredited [~~reputable~~] dental school or college or dental department of a university [~~recognized as acceptable by this board.~~]

~~(3) Applications for licensure before this board will not be accepted unless the applicant has had a course of study acceptable to the board, in a dental school or college rated as acceptable to this board~~].

(3) Applicants [~~(4) Applications~~] for licensure who are graduates of non-CODA accredited programs may [~~graduates of schools outside the territorial limits of the United States will~~] be licensed provided the applicant meets all the following criteria:

(a) Completion of two (2) years post-graduate training in general dentistry CODA accredited program(s);

(b) Submit one (1) letter of recommendation from the program director of each training site;

(c) Successful passing of national board exams I and II within the past five (5) years of application for licensure;

(d) Successful passing of a clinical examination set forth in 201 KAR 8:220 within the past five (5) years of application for licensure, and

(e) Successful passing of either the "Test of English as a Foreign Language" with a score of 650, or attainment of level 109 in the "English Language Service Test". [~~accepted at the discretion of the board.~~]

SUSAN B. FEELEY, DDS, President
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administration regulation amendment shall be held on August 29, 2005, at 10 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road Ste 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 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 amendment. 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 amendment. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Munsie, Executive Director
(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This administrative regulation amendment sets forth requirements and qualifications for those applying for dental licensure.

(b) The necessity of this administrative regulation amendment: Guidelines setting forth requirements for licensure are necessary for the Kentucky Board of Dentistry to implement the dental laws of Kentucky.

(c) How this administrative regulation amendment conforms to the content of the authorizing statutes: This administrative regulation amendment meets the statutory requirements in KRS 313.220(4) by establishing guidelines for dental licensure in Kentucky.

(d) How this administrative regulation amendment currently assists or will assist in the effective administration of the statutes: This administration regulation amendment will update 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: This administrative regulation amendment will update the guidelines and qualifications of applicants for licensure.

(b) The necessity of the amendment to this administrative regulation: To update and clarify guidelines for dental licensure applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment is within the authorizing statutes as it allows the Board of Dentistry the power to regulate dentists in the state of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will assist the Board of Dentistry in licensure of potential dentists.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation amendment: This administrative regulation amendment will affect approximately 130 to 150 dentists per year.

(4) Provide an assessment of how the above group or groups impacted by either the implementation of this administrative regulation amendment, if new, or by the change, if it is an amendment: Applicants would be expected to follow the requirements as outlined in this administrative regulation amendment to become a licensed dentist in Kentucky.

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

(a) Initially: Anticipate no additional costs for the board.

(b) On a continuing basis: The cost is already incorporated into staff job descriptions.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation amendment: The present board funds will be used to enforce this administrative regulation amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation amendment, if new, or by the change, if it is an amendment: Present board funds will be used to implement this administrative regulation amendment.

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

(9) TIERING: Is tiering applied? Yes. This administrative regulation amendment will be applied to dentists as it relates administrative regulation amendment to the existing KRS Chapter 313 and KAR Title 201 pertaining to dentists.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(Amendment)

201 KAR 8:230. Reexamination; when.

RELATES TO: KRS 313.130
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: Requires dentists to maintain a satisfactory standard of competence and proficiency to continue in the practice of dentistry in this state in order to maintain a satisfactory standard of competency in the practice of dentistry.

Section 1. "Active practice" means a minimum of 1,000 hours of practice as defined by KRS 313.010(2) during the past five (5) years with no more than any two (2) consecutive years of uninterrupted practice.

Section 2. ~~[1. In order to maintain a satisfactory standard of competency in the practice of dentistry,]~~ Any licensed dentist who has not been in the active practice of dentistry for five (5) years shall not practice or attempt to practice again unless he has been reexamined by this board.

SUSAN B. FEELEY, DDS, President
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administration regulation amendment shall be held on August 29, 2005, at 10 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road Ste 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 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 amendment. 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 amendment. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to:
CONTACT PERSON: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Munsie, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation amendment does: This administrative regulation amendment will stipulate the definition of active practice for dentists.
(b) The necessity of this administrative regulation amendment: Guidelines setting forth a definition of active practice are necessary for the Board of Dentistry to implement dental laws of Kentucky.
(c) How this administrative regulation amendment conforms to the content of the authorizing statutes: This administrative regulation amendment meets the statutory requirements in KRS 313.220(4) by establishing guidelines for dentists in Kentucky.
(d) How this administrative regulation amendment currently assists or will assist in the effective administration of the statutes: This administration regulation amendment will stipulate what is meant by active practice for a dentist in Kentucky.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment will define the term active practice of dentists.
(b) The necessity of the amendment to this administrative regulation: To help dentists know what is meant by the term "active practice".
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment is within the authorizing statutes as it allows the Board of Dentistry the power to regulate dentists in the state of Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as stated in (c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation amendment: This administrative regulation amendment will affect approximately 3,039 dentists licensed with the Kentucky Board of Dentistry
(4) Provide an assessment of how the above group or groups impacted by either the implementation of this administrative regulation amendment, if new, or by the change, if it is an amendment: Dentists would given the definition of active practice.
(5) Provide an assessment of how much it will cost to implement this administrative regulation amendment:
(a) Initially: Anticipate no additional costs for the board.
(b) On a continuing basis: Anticipate no additional costs for the board.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation amendment: The present board funds will be used to enforce this administrative regulation amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation amendment, if new, or by the change, if it is an amendment: Present board funds will be used to implement this administrative regulation amendment.
(8) State whether or not this administrative regulation amendment establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment will not establish any increase in fees.
(9) TIERING: Is tiering applied? Yes. This administrative regulation amendment will be applied to dentists as it relates administrative regulation amendment to the existing KRS Chapter 313 and KAR Title 201 pertaining to dentists

GENERAL GOVERNMENT CABINET
Board of Dentistry
(Amendment)

201 KAR 8:280. Reexamination; dental hygienists.

RELATES TO: KRS 313.330
STATUTORY AUTHORITY: KRS 313.270
NECESSITY, FUNCTION, AND CONFORMITY: Requires dental hygienists to maintain a satisfactory standard of competency and proficiency to continue in the practice of dental hygiene in this state in order to maintain a satisfactory standard of competency in the practice of dental hygiene.

Section 1. "Active practice" means a minimum of 1,000 hours of practice as defined by KRS 313.010(3) during the past five (5) years with no more than any two (2) consecutive years of uninterrupted practice. ~~[In order to maintain a satisfactory standard of competency in the practice of dental hygiene,]~~

Section 2. Any licensed dental hygienist who has not been in active practice for five (5) years shall not practice or attempt to practice again unless she has been reexamined by this board.

SUSAN B. FEELEY, DDS, President
APPROVED BY AGENCY: July 13, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administration regulation amendment shall be held on August 29, 2005, at 10 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road Ste 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 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 amendment. 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 amendment. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Munsie, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This administrative regulation amendment will stipulate the definition of active practice for dental hygienists.

(b) The necessity of this administrative regulation amendment. Guidelines setting forth a definition of active practice are necessary for the Board of Dentistry to implement dental hygiene laws of Kentucky.

(c) How this administrative regulation amendment conforms to the content of the authorizing statutes: This administrative regulation amendment meets the statutory requirements in KRS 313.270(2) by establishing guidelines dental hygienists in Kentucky.

(d) How this administrative regulation amendment currently assists or will assist in the effective administration of the statutes: This administration regulation amendment will stipulate what is meant by active practice for a dental hygienist in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment will define the term active practice for dental hygienists.

(b) The necessity of the amendment to this administrative regulation: To help dental hygienists know what is meant by the term "active practice".

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment is within the authorizing statutes as it allows the Board of Dentistry the power to regulate dental hygienists in the state of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: Same as stated in (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation amendment: This administrative regulation amendment will affect approximately 1,972 dental hygienists that are licensed with the Kentucky Board of Dentistry.

(4) Provide an assessment of how the above group or groups impacted by either the implementation of this administrative regulation amendment, if new, or by the change, if it is an amendment: Dental hygienists would be given the definition of active practice.

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

(a) Initially: Anticipate no additional costs for the board.

(b) On a continuing basis: Anticipate no additional costs for the board.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation amendment: The present board funds will be used to enforce this administrative regulation amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation amendment, if new, or by the change, if it is an amendment: Present board funds will be used to implement this administrative regulation amendment.

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

(9) TIERING: Is tiering applied? Yes. This administration regulation amendment will be applied to dental hygienists as it relates this administrative regulation amendment to the existing KRS Chapter 313 and KAR Title 201 pertaining to dental hygienists.

GENERAL GOVERNMENT CABINET
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 executory 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 made 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) "Guaranteed sales plan" means an offer or solicitation:

(a) To guarantee the sale of an owner's real estate; or

(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(6) "Inducement" means money, a free gift, a prize, or any other thing of value that a licensee would offer a potential client or customer.

(7) "Rebate" means a payment of monies or anything of value by, or on behalf of, a licensee to a client or customer (or to a third party authorized by the client or customer to receive the payment) that is in connection with the provision of real estate brokerage services. Examples of rebates directed to third parties include, but are not limited to, payments to charities, home inspectors, and moving services. A rebate does not include compensation paid for real estate brokerage services to any third party who is not licensed in Kentucky to perform such services; this definition does not authorize a client or customer to permit or direct such payments to an unlicensed third party for performing such services. ~~[Prize" 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; and~~

~~(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;~~

~~b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and~~

~~c. Was not offered prior to closing~~]

~~(8)~~[~~(7)~~] "Required disclosure" means:

(a) 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,

(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and

(c) In television advertising, that the disclosure shall:

1. Be verbal and clearly understandable, or

2. 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, and in letters:

a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or

b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

(9) [(8)] "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

SUE TEEGARDEN, Chairperson

APPROVED BY AGENCY: July 8, 2005

FILED WITH LRC: July 13, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005 at 1 p.m., (local time), in the "Ellis Room" at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway in Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 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 August 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) 429-7250, fax (502) 429-7246.

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 definitions for several statutory requirements.

(b) The necessity of this administrative regulation: Definitional sections are required to clarify certain key statutory terms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation defines certain terms found in KRS Chapter 324.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions provide clarification for licensees and consumers to understand certain statutory terms.

(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 eliminates the definition of "prize" as that issue will be handled by the amendments to 201 KAR 11:121 and adds the definitions of "inducement" and "rebate".

(b) The necessity of the amendment to this administrative regulation: In amending 201 KAR 11:121, it is necessary to delete the definition of "prize" and add the definitions of "inducement" and "rebate".

(c) How the amendment conforms to the content of the authorizing statutes. The amendments to 201 KAR 11:121 will specifically allow licensees to offer rebates and inducements to their clients or customers, when licensees disclose to them, in writing, the terms of the rebates or inducements. This amendment defines "inducement" and "rebate" as those terms are used in 201 KAR 11.121.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will simply remove a definition and add 2 additional ones due to a clarification and codification in another proposed amendment. This definitional change will eliminate any confusion and discrepancies between the 2 regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This is simply a definitional amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is and amendment: This amendment is simply eliminating the definition of a term and adding 2 additional ones.

(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 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
Real Estate Commission
(Amendment)

201 KAR 11:121. Improper conduct.

RELATES TO: KRS 324.010(3), 324.160(4)(f), (l), (m), (o), (w), (v), (5), (7), 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324 282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. The following shall be improper for any licensed agent:

(1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

(2)(a) For the protection of the client or customer, to fail to disclose in writing to the licensee's clients or customers the terms of any rebate or inducement [~~To offer, either through advertising, direct contact, or by others, to the general public, any prize, money, free gift, rebate or thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection~~].

(b) It shall not be improper conduct to disseminate information:

1 About the fee or other compensation the licensed agent agrees to charge for his or her services; or

2. About inducements and rebates offered by the licensed agent or his or her clients or customers [agent's client]

(3) [~~It shall not be improper conduct to:~~

~~(a) Advertise the fee or other compensation the licensed agent agrees to charge for his services;~~

~~(b) Advertise or distribute goods or services offered by others;~~

~~(c) Distribute marketing materials bearing the name or logo of the licensee or licensee's broker or company including but not limited to, matchbooks, magnets, pens, calculators, umbrellas, or calendars having a cost of not more than ten (10) dollars per item;~~

~~(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.~~]

~~(4)~~] 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) [~~(5)~~] 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; or

(f) Accounting.

(5) [~~(6)~~] To advertise guaranteed sales plan without required disclosure of:

(a) Whether a fee is charged for participation;

(b) Whether the real estate shall meet qualifications for participation;

(c) 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

(d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.

(6) [~~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 and in letters:~~

~~(i) Which are eighteen (18) video scan lines in size for letters which are all upper case; or~~

~~(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.~~

~~(7)~~] To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

(7) [~~(8)~~] 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; or

(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below, 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 filling 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, realtors, lender, between application and closing to appraise 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 not commensurate with the actual work performed; or

(e) Requests or receives compensation for work that is not actually performed by him or her.

(8) [~~(9)~~] A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.

SUE TEEGARDEN, Chairperson

APPROVED BY AGENCY: July 8, 2005

FILED WITH LRC: July 13, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005 at 1 p.m., local time, in the "Ellis Room" at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway in Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 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 August 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) 429-7250, fax (502) 429-7246

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 license 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 under KRS 324.160(4)(v).

(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)(v).

(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 licensees to offer rebates and inducements to their clients or customers, when licensees disclose to them, in writing, the terms of the rebates or inducements.

(b) The necessity of the amendment to this administrative regulation: This amendment allows rebates and inducements if they are in writing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies what will be allowed under the enabling statutes, with the required written disclosure.

(d) How the amendment will assist in the effective administration of the statutes: Promulgating a regulation allowing rebates and inducements and requiring them to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally.

(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 group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is and amendment: This amendment will allow rebates and inducements that licensees disclose, in writing, to clients and customers.

(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 fees will be needed.

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

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the registration of an advanced registered nurse practitioner. This administrative regulation establishes the requirements for registration, renewal, and reinstatement; programs; and recognition of a national certifying organization.

Section 1. An applicant for registration as an advanced registered nurse practitioner in Kentucky shall.

(1) Complete an "Application for Registration as an Advanced Registered Nurse Practitioner" as required by 201 KAR 20:370, Section 1(1); and

(2) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall.

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee,

(b)1. Except as provided in subparagraph 2 ~~[paragraph (b)]~~ of this paragraph ~~[subsection]~~, be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced registered nursing practice designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components;

(h) Upon successful completion, award a diploma or certificate; and

(i)1. Except as provided in subparagraph 2 ~~[paragraph (b)]~~ of this paragraph ~~[subsection]~~, extend over an enrollment period of not less than nine (9) months; or

2. If it is an organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months, be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced registered nursing practice.

(2) If the applicant for registration as an advanced registered nurse practitioner completes a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree or postmaster's certificate awarding academic credit by a college or university related to the advanced registered nurse practitioner designation.

Section 3. National Certifying Organizations (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice,

(d) Scope and standards of practice statements are promulgated,

(e) Mechanism for determining continuing competency is established, and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American College of Nurse Midwives;

(c) ACNM Certification Council;

(d) Council on Certification/Recertification of Nurse Anesthetists;

(e) Pediatric Nursing Certification Board;

(f) National Certification Corporation;

(g) American Academy of Nurse Practitioners;

(h) American Association of Critical-Care Nurses Certification Association; and

(i) Oncology Nursing Certification Corporation.

Section 4. Practice Pending Registration. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for initial certification by a national certifying organization shall be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner in the same specialty, or a licensed physician, to supervise the applicant For the purposes of this paragraph:

1. Supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards; and

2. The supervisor shall be immediately available either on site or by telephone.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this subsection shall extend until the applicant has learned the results of the request for certification.

(e) An applicant who has previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until he has been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection (1) of this section may use the title "ARNP Applicant" or "ARNP App.".

Section 5. Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire or lapse when the registered nurse license expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license on an active status;

(b) Submit a completed "ARNP Registration Renewal Application" form as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20 240, Section 1(2)(m); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive or retired status shall not practice as or use the title of advanced registered nurse practitioner until:

(a) A current active license has been issued by the board; and

(b) The advanced registered nurse practitioner registration has been reinstated.

Section 6 Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by applicable law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed "Application for Registration as an Advanced Registered Nurse Practitioner" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(n); and

(c) Maintain current certification by a recognized national certifying organization.

Section 7. Certification or Recertification. (1)(a) An advanced registered nurse practitioner shall attest on the application for registration renewal that the advanced registered nurse practitioner has:

1. Current certification or recertification [~~who has met the requirements and has applied for current, active recertification~~] by one (1) of the national organizations recognized in Section 3 of this administrative regulation, or [~~may practice as an advanced registered nurse practitioner until the results of the recertification have been received.~~]

2. Made application for current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation.

(b) The board shall conduct a random audit to verify that an advanced registered nurse practitioner has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not[:

~~(a) Be registered as an advanced registered nurse practitioner; and~~

~~(b)~~] Practice or use the title of advanced registered nurse practitioner until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8 (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced registered nursing practice; or

(2) An advanced registered nurse practitioner refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to register as an advanced registered nurse practitioner if

his practice includes the performance of advanced registered nursing procedures

Section 11. A nurse practicing as an advanced registered nurse practitioner who is not registered as an advanced registered nurse practitioner by the board, an advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or an advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314 091.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: June 17, 2005
FILED WITH LRC: July 12, 2005 at 3 p m
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 August 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 requirements for Advanced Registered Nurse Practitioners (ARNPs).
(b) The necessity of this administrative regulation: The board is required to regulate ARNPs.
(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It clarifies one educational requirement. It also provides for an audit of recertifications by ARNPs.
(b) The necessity of the amendment to this administrative regulation: For clarification of the educational requirements. The audit is needed to simplify the registration renewal process.
(c) How the amendment conforms to the content of the authorizing statute: The board is authorized to regulate ARNPs.
(d) How the amendment will assist in the effective administration of the statutes: By simplifying and streamlining the registration renewal process.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ARNPs, approximately 2,800.
(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 registration renewal process will be simplified and streamlined for ARNPs.
(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
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary
(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
(Amendment)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314 011(7), 314.042, 314 193(2)
STATUTORY AUTHORITY: KRS 314.131(1), 314.193(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced registered nursing practice to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced registered nurse practitioner.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced registered nurse practitioner and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced registered nurse practitioner and the physician contributing their respective expertise.
(2) "Collaborative practice agreement" means a written document which defines the scope of prescriptive authority for the advanced registered nurse practitioner and is jointly approved by the advanced registered nurse practitioner and at least one (1) physician.

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:
(1) ~~[American Nurses' Association, The Scope of Practice of the Primary Health Care Nurse Practitioner, 1985, Standards of Practice for the Primary Health Care Nurse Practitioner, 1987;~~
~~(2) American Nurses' Association,~~] Scope and Standards of Psychiatric-Mental Health Nursing Practice[~~, 2000~~];
(2) ~~[(3) American Nurses' Association, Statement on the Scope of Medical-Surgical Nursing Practice, 1980;~~
~~(4) American Nurses' Association,~~] Scope and Standards of Advanced Practice Registered Nursing[~~, 1996~~];
(3) ~~[(5) American Association of Nurse Anesthetists,~~] Scope and Standards for Nurse Anesthesia Practice;
(4) [~~, 1996, and~~] Standards for Office-based Anesthesia Practice[~~, 2001~~];
(5) ~~[(6) American College of Nurse Midwives,~~] Standards for the Practice of [~~Nurse-~~]Midwifery[~~, 1996~~];
(6) ~~[(7) Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health,~~] The Women's Health Nurse Practitioner: Guidelines for Practice and Education[~~, 2002~~];
(7) Scope and ~~[(8) National Association of Pediatric Nurse Practitioners, Scope of Practice for Pediatric Nurse Practitioners in Primary Care, 2000,~~] Standards of Practice; ~~[for]~~ Pediatric Nurse Practitioner ~~[Practitioners, 2001]~~;

(8) [(9) American Academy of Nurse Practitioners,] Standards of Practice;

(9) [, 2002 and] Scope of Practice for Nurse Practitioners[, 2002];

(10) [American Nurses' Association/American Association of Critical Care Nurses,] Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner[, 1995];

(11) [National Association of Neonatal Nurses,] Neonatal Nursing' Scope and Standards of Practice [Nurse Practitioners: Standards of Education and Practice, 1992];

(12) [American Association of Critical care Nurses,] Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist[, 2002], and

(13) [Oncology Nursing Society,] Statement on the Scope and Standards of Advanced Practice Nursing in Oncology [Nursing, 1997].

Section 3. In the performance of advanced registered nursing practice, the advanced registered nurse practitioner shall practice in accordance with the collaborative practice agreement, if applicable, and shall seek consultation or referral in those situations outside the advanced registered nurse practitioner's scope of practice.

Section 4. Advanced registered nursing practice shall include prescribing treatments, drugs, and devices and ordering diagnostic tests which are consistent with the scope and standard of practice of the advanced registered nurse practitioner.

Section 5. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

Section 6. The collaborative practice agreement shall include the name, address, phone number, and license or registration number of both the advanced registered nurse practitioner and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced registered nurse practitioner. An advanced registered nurse practitioner shall, upon request, furnish to the board or its staff, a copy of the collaborative practice agreement.

Section 7. Prescribing without a written collaborative practice agreement shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced registered nurse practitioner to determine if the advanced registered nurse practitioner's practice is consistent with the requirements established by 201 KAR Chapter 20.

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

(a) ["The Scope of Practice of the Primary Health Care Nurse Practitioner", 1985 Edition, American Nurses' Association,

(b) "Standards of Practice for the Primary Health Care Nurse Practitioner", 1987 Edition, American Nurses' Association;

(c)] "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2000 Edition, American Nurses' Association;

(b) [(d) "Statement on the Scope of Medical-surgical Nursing Practice", 1980 Edition, American Nurses' Association;

(e)] "Scope and Standards of Advanced Practice Registered Nursing", 1996 Edition, American Nurses' Association;

(c) [(f)] "Standards for Office-based Anesthesia Practice", 2002 [2001] Edition, American Association of Nurse Anesthetists;

(d) [(g)] "Scope and Standards for Nurse Anesthesia Practice", 2002 [1996] Edition, American Association of Nurse Anesthetists;

(e) [(h)] "Standards for the Practice of [Nurse-] Midwifery", 2003 [1996] Edition, American College of Nurse-midwives;

(f) [(i)] "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2002 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) [(j) "Scope of Practice for Pediatric Nurse Practitioners in Primary Care", 2000 Edition, National Association of Pediatric Nurse Practitioners;

(k)] "Scope and Standards of Practice: [for] Pediatric Nurse Practitioner [Practitioners]", 2004 [2001] Edition, National Association of Pediatric Nurse Practitioners;

(h) [(l)] "Standards of Practice", 2002 Edition, American Academy of Nurse Practitioners;

(i) [(m)] "Scope of Practice for Nurse Practitioners", 2002 Edition, American Academy of Nurse Practitioners;

(j) [(n)] "Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner", 1995 Edition. American Nurses' Association/American Association of Critical Care Nurses;

(k) [(o)] "Neonatal Nursing' Scope and Standards of [Nurse Practitioners: Standards of Education and] Practice", 2004 [1992] Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) [(p)] "Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist", 2002 Edition, American Association of Critical-Care Nurses; and

(m) [(q)] "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology [Nursing]", 2003 [1997] Edition, Oncology Nursing Society.

(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 40222, Monday through Friday, 8 a.m. to 4.30 p.m.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY. June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 August 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 standards for the scope of practice of Advanced Registered Nurse Practitioners (ARNPs) and adopts national organizations' scopes and standards of practice.

(b) The necessity of this administrative regulation: The board is required to recognize scopes and standards of practice for ARNPs.

(c) How this administrative regulation conforms to the content of the authorizing statute: By adopting scopes and standards of practice for ARNPs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By adopting scopes and standards of practice for ARNPs.

(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 updates certain national scopes and standards documents.

(b) The necessity of the amendment to this administrative regulation: To maintain current documents.

(c) How the amendment conforms to the content of the authorizing statute. By adopting current scopes and standards of practice for ARNPs.

(d) How the amendment will assist in the effective administration of the statutes. By adopting current scopes and standards of practice for ARNPs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ARNPs, approximately 3,000.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment ARNPs will have current scopes and standards of practice to refer to.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. General agency funds.

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

(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
(Amendment)

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, divorce decree, Social Security card, 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;.

(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. This section shall apply to applicants beginning January 1, 2006. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met.

(b). In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1 (1) and (4) are met.

(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, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

4. 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 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.

(8) 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) To qualify as "direct supervision" under KRS 314.041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to 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)(a) 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.

(b) A graduate of a foreign nursing school who complies with 201 KAR 20:480, Section 1(4)(b) shall be authorized to complete the clinical internship after passing the NCLEX.

(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", (2/96), Kentucky Board of Nursing; and

(b) "Petition to Hold Provisional License in Abeyance," (8/04), Kentucky Board of Nursing.

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JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 by examination of applicants for nursing licensure.

(b) The necessity of this administrative regulation: The board is required by statute to set requirements.

(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: Several minor changes are being made to recognize the impact of the clinical internship of foreign-educated nurses and to allow other means for name change.

(b) The necessity of the amendment to this administrative regulation: To effect better administration of the statutes.

(c) How the amendment conforms to the content of the authorizing statute: By updating administrative procedures.

(d) How the amendment will assist in the effective administration of the statutes: By updating administrative procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants, 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 an easier time completing a name change. Foreign-educated nurses will be able to complete the clinical internship.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:095. Retired nurse licensure status.

RELATES TO: KRS 314.041(10), 314 051(10)
STATUTORY AUTHORITY: KRS 314.041(10), 314 051(10), 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(10) and 314 051(10) authorize the board to promulgate administrative regulations concerning the granting of retired status for persons holding licensure as a "registered nurse" or a "licensed practical nurse". This administrative regulation establishes requirements for obtaining retired status and establishes requirements for changing licensure status to active.

Section 1. Retired Status. (1) Beginning November 1, 2005, a licensed practical nurse who is retired and holds or has held a Kentucky nurse license may apply for retired status by:
(a) Completing the "Application for Retired Status" as required by 201 KAR 20.370,
(b) Paying the fee set out in 201 KAR 20:240; and
(c) Submitting a copy of an official name change document, such as a court order, marriage certificate, Social Security card, or divorce decree, if applicable. (2) Beginning November 1, 2006, a registered nurse who is retired and holds or has held a Kentucky nurse license may apply for retired status by:
(a) Completing the "Application for Retired Status" as required by 201 KAR 20 370;
(b) Paying the fee set out in 201 KAR 20:240; and
(c) Submitting a copy of an official name change document, such as a court order, marriage certificate, Social Security card, or divorce decree, if applicable. (3) If the nurse currently holds an active license, he shall return the active license card with the "Application for Retired Status".
(4)(a) Upon completion of all requirements, the board shall issue the nurse a retired status license.
(b) The retired status license shall remain in effect unless reinstated in accordance with 201 KAR 20:225. A nurse who is currently under disciplinary action shall not be eligible for retired status.

Section 2. (1) An individual who has been granted retired status in Kentucky shall not be employed in this state as a nurse or function in the capacity of a nurse while maintaining the retired status.
(2) An individual who is employed or who practices as a nurse in this state while on retired status shall be considered to be practicing without a license and in violation of KRS 314.031 and subject to the penalties in KRS 314.091 and 314.991.

Section 3. Inactive Licensure Status. (1) The requirements established in this section shall apply until:
(a) November 1, 2005 for a licensed practical nurse; or
(b) November 1, 2006 for a registered nurse.
(2) If an individual has held inactive licensure status in Kentucky and wishes to apply for active licensure status, the individual shall:
(a) Complete the "Application for Licensure" as required by 201 KAR 20:370, Section 1(1)(a);
(b) Pay the current application fee for an active license required by 201 KAR 20:240, Section 1(2)(h); and
(c) Show evidence of:
1. Licensure in another jurisdiction and active nursing practice of at least 500 hours within the preceding five (5) years in that jurisdiction;
2. If an applicant has held an inactive license for five (5) years or less, completion of fourteen (14) [~~fifteen (15)~~] contact hours of continuing education for each year since the last year of active licensure, with a minimum of twenty-eight (28) [~~thirty (30)~~] contact hours to a maximum of seventy (70) [~~seventy-five (75)~~] contact hours.
a. Twenty-eighty (28) [~~Thirty (30)~~] hours of continuing education shall have been earned within twenty-four (24) months of the date of the application.
b. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement; or
3. If an applicant has held an inactive license for more than five (5) years, completion of:
a. 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
b. At least 120 contact hours of continuing education earned within one (1) year of the date of the application.
(3) An individual who has been granted inactive status in Kentucky shall not be employed in this state as a registered nurse or licensed practical nurse or function in the capacity of a nurse while maintaining the inactive status. An individual who is employed or who practices as a nurse in this state while on inactive status shall be considered to be practicing without a license and in violation of KRS 314 031 and subject to the penalties in KRS 314 091 and 314 991.
(4) Individuals changing licensure status from inactive to active during the first licensure period following issuance of a license by either examination or endorsement shall not lose the continuing education exemption of KRS 314.073(1).
(5) An individual who was licensed on or after July 15, 1996, and who changes licensure status from inactive to active shall provide evidence of having earned three (3) hours of continuing education in domestic violence as required by KRS 194A.540. This requirement shall apply to an individual one (1) time only. Once earned, it shall not apply to any subsequent change of status.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: June 17, 2005
FILED WITH LRC: July 12, 2005 at 3 p m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 retired nurse licensure status.
(b) The necessity of this administrative regulation: The board is required by statute 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 statutes: By setting requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. It will make it easier to make a name change, and it corrects certain continuing education hour requirements.

(b) The necessity of the amendment to this administrative regulation: To assist in the effective administration of the statutes

(c) How the amendment conforms to the content of the authorizing statute: By making the necessary corrections and updates

(d) How the amendment will assist in the effective administration of the statutes: By making the necessary corrections and updates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for retired nurse licensure status, 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: Name changes will be easier to accomplish and the CE requirements will be correct.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031(4), 314.041(7), 314.051(8), 314.101(4), 314.103

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 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(7), 314.051(8) 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 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 nursing equivalent to Kentucky requirements;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 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. A 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;

(k) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI, and

(l) 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, divorce decree, Social Security card, 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) 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 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) [1.] 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) At least twenty-eight (28) 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 or [,] the National Council Licensure Examination [, ~~or the Canadian Registered Nurse 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 to 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;

(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. This section shall apply to applicants beginning January 1, 2006, as required by KRS 314.041(7) or 314.051(8).

(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(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 (4) 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"; 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)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, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

(b) 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 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) To qualify as "direct supervision" under KRS 314 041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available 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) An applicant for an LPN license pursuant to KRS 314 041(14) shall meet the requirements of this administrative regulation.

Section 7. Incorporation by Reference. (1) "Petition to Hold Provisional License in Abeyance", (8/04), Kentucky Board of Nursing, is incorporated by reference.

(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 40222, Monday through Friday, 8 a.m to 4:30 p m.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 by endorsement for applicants for nursing licensure.

(b) The necessity of this administrative regulation: The board is required by statute 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 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 makes several administrative updates to make it easier to do a name change, to submit evidence of practice, and to no

longer recognize the Canadian licensure examination.

(b) The necessity of the amendment to this administrative regulation: To assist in the effective administration of the statutes.

(c) How the amendment conforms to the content of the authorizing statute: By updating administrative procedures.

(d) How the amendment will assist in the effective administration of the statutes: By updating administrative procedures

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, 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: They will have a simpler administrative process. Graduates of Canadian nursing schools will have to take the U.S. examination.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS 314.011(13), 314.031, 314.071(4), 314.091, 314.991(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: To protect and safeguard the health and safety of the citizens of Kentucky and to provide for procedures in the receipt and disposition of complaints. A portion of 201 KAR 20:115 is being transferred to this administrative regulation. That administrative regulation deals with limited licenses following disciplinary action and for individuals with handicaps that may impair their ability to safely perform the full scope of nursing practice. The portion of the administrative regulation dealing with limited licenses following disciplinary action is being retained and put in this administrative regulation. 201 KAR 20:115 is being repealed because of concerns about the impact of the Americans with Disabilities Act on it.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, applicant or unlicensed individual if the complaint alleges acts which may be in violation of the provisions of KRS Chapter 314.

(2) All complaints shall be in writing and shall be dated and fully identify the complainant by name and address. The president of the board or the executive director or his designee may file a complaint based upon information received by oral, telephone or written communications if the facts of the complaint are determined to be accurate and indicate acts which may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(4) Complaints shall be investigated. The staff may request an informal conference with the individual against whom the complaint has been made.

(5) Complaints shall be evaluated to determine if an apparent violation of the provisions of KRS Chapter 314 has been committed. The credentials review panel, the executive director or his designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public. If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) The complaint may be filed away if there is a determination that there is insufficient evidence of a violation or that a violation has not occurred;

(b) The complaint may be referred to the credentials review panel of the board by the executive director or his designee for disposition pursuant to this section or for issuance of a letter of concern; or

(c) It may be determined that there is probable cause that a violation of KRS 314.091 has occurred.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section; or

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, KRS Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107 [~~last known address of the licensee or applicant. Service shall be deemed complete upon mailing whether or not the notice is claimed~~].

(c) Notice of the hearing and charges shall be signed by the executive director or his designee.

(4) Agreed order.

(a) The board may enter into an agreement with an applicant or licensee for revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty. The terms of the agreement may include other conditions or requirements to be met by applicant or licensee, such as those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms which insure protection of public health and safety, or which serve to educate or rehabilitate the applicant/licensee.

(c) The agreed order when approved by the board shall terminate the investigation of a specific complaint.

(5) Consent decree.

(a) If a licensee or applicant agrees to waive his right to a hearing and there is no evidence of intentional violation of the mandatory licensure provisions of KRS Chapter 314, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty against a licensee or applicant who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit or a current, active license issued by the board prior to filing an application for licensure.

2. Practiced as an advanced registered nurse practitioner in the Commonwealth of Kentucky without current, active registration issued by the board prior to filing an application for registration.

3. Practiced as an advanced registered nurse practitioner after expiration of the current certification granted by the appropriate national organization or agency.

4. Obtained a license or work permit on the basis of a check for an application fee which was returned unpaid by the bank.

5. Qualified for a consent decree to cure noncompliance with continuing education requirements, as set forth in 201 KAR 20:215,

Section 3.

6. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months.

(b) The use of a consent decree shall be restricted to only those applicants or licensees described above and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license or registration may be issued by board staff after the applicant or licensee meets all requirements for licensure or registration and after payment of the civil penalty by the applicant or licensee.

(d) Upon ratification by the board of the consent decree the investigation of the specific complaint shall be terminated.

(e) If consent decree is not ratified by the board, charges may be brought pursuant to KRS 314 091 and the matter resolved as directed therein.

(f) Consent decrees which have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing or other organization, unless required by law.

Section 3. The executive director or his designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a limited temporary work permit or limited license may include but are not limited to the following:

(1) Prohibiting the performance of specific nursing acts such as access to, responsibility for, or the administration of controlled substances, administration of any medication; supervisory functions; or any act which the licensee or applicant cannot safely perform.

(2) Requiring the applicant or licensee have continuous, direct, on-site supervision by a registered nurse, physician, or dentist.

(3) Specifying the applicant's or licensee's practice setting

(4) Specifying the types of patients to whom the applicant or licensee may give nursing care

(5) Requiring the applicant or licensee to notify the board in writing of any change in name, address, or employment.

(6) Requiring the applicant or licensee to have his employer submit to the board written reports of performance or compliance with the requirements set by the board.

(7) Requiring the applicant or licensee to submit to the board evidence of physical or mental health evaluations, counseling, therapy or drug screens.

(8) Meeting with representatives of the board.

(9) Issuing the license or temporary work permit for a specified period of time.

Section 5. A limited temporary work permit or limited license may be issued to:

(1) An applicant or licensee who has been subjected to disciplinary action by the board pursuant to KRS 314.091; or

(2) An applicant or licensee who holds a license with restrictions or conditions in another jurisdiction as a result of disciplinary action and has had action by the board pursuant to KRS 314.091.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 procedures for the investigation and disposition of disciplinary complaints against nurses.

(b) The necessity of this administrative regulation: The board is required by statute to set these procedures.

(c) How this administrative regulation conforms to the content of the authorizing statute: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It will update certain administrative procedures, such as allowing the issuance of a letter of concern in certain cases.

(b) The necessity of the amendment to this administrative regulation: The updates are necessary to assist in the effective administration of the statutes.

(c) How the amendment conforms to the content of the authorizing statute: By updating administrative procedures

(d) How the amendment will assist in the effective administration of the statutes: By updating administrative procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RNs and LPNs with disciplinary complaints, 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: The handling of disciplinary complaints will be more effective.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314 073(3) require the board to establish continu-

ing competency requirements and approve providers of continuing education. This administrative regulation establishes requirements for providers of continuing education

Section 1 (1) A provider applicant shall submit an:

(a) "Application for Provider Approval"; and

(b) Application fee as set forth in 201 KAR 20:240

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) Provider approval shall initially expire[~~:~~

~~(a) For a health care agency,~~] on December 31 [~~June 30~~] of the second year following initial approval [~~next even-numbered year,~~

~~(b) For a nonhealth care agency, on June 30 of the next odd-numbered year~~].

(4) On or before September [March] 30 of the year in which an approval period expires, an approved provider shall submit the [a]

(a) "Application for Provider Renewal" [~~Request for Renewal~~"]; and

(b) Fee as set forth in 201 KAR 20:240.

(5) Renewal shall be for five (5) [~~two (2)~~] years.

(6) A provider applicant may establish compliance by submitting evidence of approval by one (1) of the following [~~an organization listed in the board's "List of Recognized~~] organizations: [~~"~~]

(a) American Academy of Nurse Practitioners;

(b) American Association of Critical Care Nurses;

(c) American Association of Nurse Anesthetists;

(d) American College of Nurse Midwives;

(e) American Nurses Credentialing Center;

(f) Association of Women's Health, Obstetrical and Neonatal Nurses;

(g) National Association of Nursing Practitioners in Women's Health;

(h) National Association Pediatric Nurses Associates and Practitioners;

(i) National Association for Practical Nurses Education and Service;

(j) National Federation of Licensed Practical Nurses;

(k) National League for Nursing, and

(l) State Boards of Nursing.

(7)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation [~~the "List of Recognized Organizations"~~].

(b) An organization shall be included in this administrative regulation [~~the "List of Recognized Organizations"~~] if the board determines that its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 2. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time specified in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 3. Providers shall comply with the following standards:

(1)(a) A nurse who meets the qualifications established in paragraph (b) [~~or (c)~~] of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current active license,
2. Have experience in adult and continuing education; and
3. Hold a baccalaureate or higher degree, in nursing

(c) The nurse administrator of continuing education for licensed practical nursing groups shall hold a diploma, or its equivalent, from an approved school of practical nursing

(2) Organized learning activities shall be based upon systematic needs assessment, and shall support quality continuing education that:

(a) Enhances the quality, safety and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote the development, or change in attitudes, necessary to make competent judgments and decisions in nursing

(4) Objectives for continuing education activities shall be.

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with needs assessment data.

(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty and content experts.

(6) The content for each educational activity shall include and be documented in provider files as follows:

(a) An agenda indicating a presentation schedule, presenters, topics, meals, breaks.

(b) Topical outline, teaching methods, and corresponding time frames sufficient to support relevance and value of the educational activity to safe, effective nursing practice.

(7) Teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles.

(8) Faculty for continuing education activities shall demonstrate content knowledge and expertise.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learning objectives;

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy; and

(g) Requirements for successful completion.

(12) Published information about continuing education activities offered by providers approved by the board shall include the:

(a) Provider number; and

(b) Following statement. "Kentucky Board of Nursing approval of an individual nursing continuing education provider does not constitute endorsement of program content."

(13) A provider shall notify the board in writing within one (1) month of any changes in its administration, such as nurse administrator, mailing address, telephone number or other relevant information.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to pharmacology.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

(a) Title, date and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning committee activities, learner objectives, content outline, faculty, teaching and evaluation methods;

(d) Participant roster, with a minimum of.
1. Name; and
2. Social Security number or license number;
(e) Summary of participant evaluations;
(f) Number of continuing education contact hours awarded,
(g) Master copy of certificate awarded.
(16) Participants shall receive a certificate of attendance that documents participation with the following·
(a) Name of participant;
(b) Offering title, date and location;
(c) KBN's provider's name, address, telephone number, approval number and expiration date;
(d) Name and signature of authorized provider representative,
(e) Number of continuing education contact hours awarded.
(17) There shall be a clearly defined method for evaluating the continuing education activity which includes the following·
(a) An evaluation tool that includes participant appraisal of achievement of each learning objective; teaching effectiveness of each presenter; relevance of content to stated objectives; effectiveness of teaching methods; and appropriateness of physical facilities.
(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.
(18) An action plan with time lines for resolution of identified deficiencies shall be maintained.
(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards
(20) The continuing education providership shall be a recognizable function within the sponsoring organization.

Section 4 [~~(1) A continuing education provider applicant may request limited offering approval for no more than three (3) continuing education courses.~~

~~(2) All standards specified in this administrative regulation shall apply with the exception of Section 3(1) of this administrative regulation.~~

~~(3) A continuing education provider of limited offerings shall be administered by a healthcare professional with credentials supporting content expertise in the subject matter of the proposed limited offerings.~~

~~Section 5.~~] (1) The following forms are incorporated by reference:
(a) "Application for Provider Approval [~~(1992)~~]", 6/2005, Kentucky Board of Nursing;
(b) "Application for Provider Renewal", 6/2005, Kentucky Board of Nursing [~~List of Recognized Organizations (2003)"; and~~
~~(c) "Request for Renewal (1992)"~~].
(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 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: June 17, 2005
FILED WITH LRC: July 12, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to
CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 requirements for nursing continuing education provider approval.
(b) The necessity of this administrative regulation: The board is required by statute 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 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 updates and simplifies administrative procedures, such as making the renewal period longer.
(b) The necessity of the amendment to this administrative regulation: The changes are needed to assist in the effective administration of the statute
(c) How the amendment conforms to the content of the authorizing statute. By updating procedures
(d) How the amendment will assist in the effective administration of the statutes: By updating procedures.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nursing continuing education providers. Approximately 100.
(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: Procedures will be updated and simplified for the providers.
(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.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The renewal fee will be increase in 201 KAR 20:240 since the length of the renewal period is increasing.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.091
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(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of the statutes or administrative

regulations. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal,

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by

(a) Submitting a completed application form required by 201 KAR 20.370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20.240, Section 1(2)(g) or (l); and

(c) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, with a minimum of twenty-eight (28) contact hours, if the date of last active licensure is within five (5) years of the application for reinstatement.

1. Twenty-eight (28) [~~Fourteen (14)~~] hours of continuing education shall have been earned within twenty-four (24) [~~twelve (12)~~] months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the 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.

(c) An individual who was exempt from the contact hour earning requirement pursuant to KRS 314.073(1) and who applies for reinstatement of a lapsed license within one (1) year from the date of lapse shall earn fourteen (14) [~~seven (7)~~] contact hours.

(4) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply. The applicant shall submit evidence to verify the current licensure and active practice.

(5) An applicant who applies for reinstatement of a lapsed license under this section within thirty (30) days of October 31 of a licensure year may use the continuing competency methods set out in 201 KAR 20.215, Section 3, for reinstatement.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period. The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation,

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good, or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default of a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection may be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1) An individual who reinstates a license during the first seven (7) months of a licensure period shall be exempt from meeting the continued competency requirements of 201 KAR 20.215 [~~For an individual who reinstates a license during the first seven (7) months of a continuing education contact hour earning period, contact hour earning which meets or exceeds the contact hour requirement for the upcoming licensure renewal may be accepted as evidence of earning for both current and upcoming licensure periods~~]

(2)(a) A copy of an official name change document shall be submitted by the applicant when making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;

2. Marriage certificate; [or]

3. Divorce decree; or

4. Social Security card.

(3) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 [~~(a) An individual who was licensed on or after July 15, 1996, and who reinstates a lapsed or retired status license~~] shall provide evidence of having earned three (3) hours of continuing education in domestic violence as required by KRS 194A.540 prior to reinstating the license

[~~(b) This requirement shall apply to an individual one (1) time only.~~

~~(c) Once earned, it shall not apply to any subsequent reinstatement.~~]

(4) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 reinstatement of a nursing license.

(b) The necessity of this administrative regulation: The board is required by statute 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 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 updates and rewords certain administrative procedures, such as correcting certain continuing education requirements.

(b) The necessity of the amendment to this administrative regulation: To assist in the effective administration of the statutes.

(c) How the amendment conforms to the content of the authorizing statute: By updating administrative procedures.

(d) How the amendment will assist in the effective administration of the statutes: By updating administrative procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RNs and LPNs seeking reinstatement of a nursing license, 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: Reinstatement applicants will have clearer requirements.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office, postmarked no later than the last day of the licensure period,

(3) Submit the current fee required by 201 KAR 20:240;

(4) Have met requirements of 201 KAR 20.215, if applicable,

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;

(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on licenses in other jurisdictions; and

(7) Have paid all monies due to the board[; and

~~(8) Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable~~]

Section 2. An applicant who is renewing for the first time an original Kentucky license issued by examination or endorsement shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215.

Section 3. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 renewal of a nursing license.

(b) The necessity of this administrative regulation: The board is required by statute 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 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 removes unnecessary language concerning name change.

(b) The necessity of the amendment to this administrative regulation: The language no longer applies.

(c) How the amendment conforms to the content of the authorizing statute. Name changes must be done separately from renewal.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying when a name change can be done.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses changing names, 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: Name changes cannot be done with renewals.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny, limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, reinstatement or change of status, "Application for Licensure";

(b) For RN or LPN Renewal, " Licensure Renewal Application";

(c) For registration or reinstatement as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner"; or

(d) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable,

(7) Submit additional information as required by the board in an administrative regulation;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070,

(b) Licensure by endorsement established by 201 KAR 20.110;

(c) Licensure by reinstatement established by 201 KAR 20.225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 6/2005 [8/2004], Kentucky Board of Nursing;

(b) " Licensure Renewal Application", 8/2004, Kentucky Board of Nursing;

(c) "Application for Registration as an Advanced Registered Nurse Practitioner", 6/2002, Kentucky Board of Nursing;

(d) "ARNP Registration Renewal Application", 6/2005 [8/2004], Kentucky Board of Nursing; and

(e) "Application for Retired Status", 8/2004, 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 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to

CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 establishes requirements for licensure and registration for nurses.

(b) The necessity of this administrative regulation: The board is required by statute to establish these requirements.

(c) How this administrative regulation conforms to the content of the authorizing statute: By establishing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing 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 makes it easier to do a name change and it clarifies the expiration date of an application.

(b) The necessity of the amendment to this administrative regulation: To assist in the effective administration of the statutes.

(c) How the amendment conforms to the content of the authorizing statute: By making the clarifications.

(d) How the amendment will assist in the effective administration of the statutes: By making the clarifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure or registration, 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: Name change procedures will be simpler and the expiration date will be clarified

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 create the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026 requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. KRS 314.025 also allows the Nursing Incentive Scholarship Fund to issue grants for nursing workforce competency development. This administrative regulation provides criteria for submitting grant requests.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and for a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Committee" means the Kentucky Nursing Incentive Scholarship Fund Grant Review Committee.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(11).

(5) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

(6) "Successful academic progression" means:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of fifteen (15) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing, or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

(c) The provisions of paragraphs (a) and (b) of this subsection shall not apply during the last academic year preceding graduation.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.

Section 3. The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet as needed to review grant requests submitted pursuant to Section 11 of this administrative regulation.

(3) A member of the committee shall:

(a) Serve without compensation; and

(b) Be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty-five (25) points;

(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and

(c) Financially-needy Kentucky residents, forty (40) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows: high school, vocational school, college or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points

Section 5 Amount of Award (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The board shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 7 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient.

(a) Maintains successful academic progression through the program; and

(b) Submits to the board a completed "Nursing Incentive Scholarship Fund Application" form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section 8. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract".

(2) The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he is enrolled within the time specified by the program of nursing; or

(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferment shall apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a "Nursing Incentive Scholarship Fund Request for Deferment" form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) When a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5) shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school

Section 11. Grant Requests. (1) No more than forty (40) percent of available revenues received from fines levied by the Cabinet for Health Services shall be expended for grants in any given year.

(2) The deadline for grant requests shall be May 1 and November 1 annually.

(3) The grant request shall include the following:

(a) A problem statement or purpose related to improving nursing workforce competency;

(b) The proposed workforce development activity and how it has general applicability to the entire nursing workforce in the state;

(c) The proposed timelines and outcomes;

(d) The outcome measurement criteria to be used;

(e) The amount requested with a supporting budget;

(f) Any matching or in kind budget contributions to be received, and

(g) The preferred funding cycle of either all funds given initially or partial funds given initially and the remainder at specified intervals.

(4) The following are the reporting requirements for grants that are funded:

(a) An initial report shall be submitted to the board six (6) months following funding or at the midpoint of the grant timeline if that is sooner than six (6) months from the funding date or as directed by the board.

(b) Interim reports shall be submitted at six (6) month intervals or as required by the board for the duration of the project funded.

(c) A final report shall be submitted to the board within three (3) months of completion of the project. The final report shall document outcome achievements and their relationship to the funds spent.

(5) Any money that is unused for the purpose of the grant shall be returned to the fund, unless otherwise directed by the board.

Section 12. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application (12/01)";

(b) "Nursing Incentive Scholarship Fund Request for Deferral (10/96)";

(c) "Nursing Incentive Scholarship Fund Contract (10/96)"; and

(d) "Nursing Incentive Scholarship Fund Promissory Note (10/96)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JIMMY T. ISENBERG

APPROVED BY AGENCY: June 17, 2005
FILED WITH LRC: July 12, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 the requirements for the Nursing Incentive Scholarship Fund (NISF).

(b) The necessity of this administrative regulation: The board is required to set requirements for the NISF.

(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: It will add a provision that when there is a judgment rendered by a court against a defaulting recipient, if the recipient is a nurse, their license cannot be renewed until payments are made. Also, it adds a provision that if a person defaults on an NISF loan, they cannot receive another one until the first one is repaid.

(b) The necessity of the amendment to this administrative regulation: Situations have arisen recently that indicate the need for the amendment.

(c) How the amendment conforms to the content of the authorizing statute: The board is authorized to set requirements for the NISF.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the consequences of certain defaults.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Defaulting NISF recipients, 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: Some will not be able to renew if the NISF is not repaid.

(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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds

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

(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
(Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 314.142
STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological and social health.

Section 2. SANE Course Approval Application. On the form "Application for Initial or Continued SANE Course Approval", the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which when taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. Supervised detailed genital inspection, speculum examination, visualization techniques and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing relevant civil or criminal trials, meeting with Commonwealth Attorney, or similar legal experience - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement and judicial system personnel,

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting sexual assault pursuant to KRS 216B 400(2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody,

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550,

h. Crisis intervention,

i. Dynamics of sexual assault,

j. Testifying in court,

k. Overview of the criminal justice system and related legal issues;

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances and development stages;

q Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date and site of the course; and

(b) Participant roster, with a minimum of names, Social Security numbers and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the "Application for Initial or Continued SANE Course Approval".

(3) Continued approval shall be based on the past approval period performance and compliance with board standards.

Section 5. The board may deny, revoke or suspend the approval status of a SANE course for cause.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall.

(a) Hold a current, active registered nurse license in Kentucky;

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the "Application for SANE Credential"; and

(e) Pay the fee established in 201 KAR 20:240.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning penod. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the "SANE Renewal Application " and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) [~~two (2)~~] consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the "Application for SANE Credential";

(b) Paying the fee established in 201 KAR 20:240, and

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed.

(2) If the SANE credential has lapsed for more than four (4) [~~two (2)~~] consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval" (6/97), Kentucky Board of Nursing;

(b) "Application for SANE Credential" 10/2002, Kentucky Board of Nursing, and

(c) "SANE Renewal Application " 8/2004, 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 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 standards for Sexual Assault Nurse Examiner (SANE) programs and credential requirements.

(b) The necessity of this administrative regulation: The board is required by statute to set these requirements and standards.

(c) How this administrative regulation conforms to the content of the authorizing statute: By setting requirements and standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements and standards.

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

(a) How the amendment will change this existing administrative regulation: It changes the requirements for reinstatement to conform to the new RN renewal period.

(b) The necessity of the amendment to this administrative regulation: The previous language was incorrect given the new RN renewal period.

(c) How the amendment conforms to the content of the authorizing statute: By correcting the requirement.

(d) How the amendment will assist in the effective administration of the statutes: By correcting the requirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sexual Assault Nurse Examiners seeking reinstatement, 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: Reinstatement requirements will conform to the new RN renewal period.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. General agency funds

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

(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
(Amendment)

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

RELATES TO: KRS 314.041, 314.051

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 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools.

Section 1. Applicants for Licensure by Examination. (1)[(a)] An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

~~[(b) An applicant who is a graduate of a nursing school in Canada, including all provinces except Quebec, shall meet all of the requirements of 201 KAR 20:070, Section 1, including Section 1(3) of that administrative regulation.]~~

(2) If licensed in another country, or in a jurisdiction or territory governed by the United States, evidence shall be submitted by the applicant or an organization on behalf of the applicant ~~[shall submit a statement from the licensing authority]~~ that the[:

~~(a) Applicant is a licensee in good standing; and~~

~~(b)~~] license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) ~~[For]~~ An applicant for licensure as a registered nurse or a licensed practical nurse~~[, prior to taking the NCLEX examination, the applicant]~~ shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) If an applicant chooses to take the NCLEX for the VisaScreen, he shall notify the board in writing of that choice ~~[For an applicant for licensure as a licensed practical nurse, the applicant shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools]~~.

(5) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until he provides a social security number.

Section 2. Applicants for Licensure by Endorsement. (1) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.

(2) A graduate of a foreign nursing school who is not a citizen

of the United States shall maintain evidence of legal permanent or temporary residency in the United States.

(3)(a) An applicant for licensure as a registered nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools

[~~(4) The Canadian Registered Nurse Examination (in English) and the Canadian Practical Nurse Registration Examination (in English) are deemed equivalent to the National Council Licensure Examination (NCLEX) for purposes of this administrative regulation.~~]

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2005

FILED WITH LRC: July 12, 2005 at 3 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 2005, at 9 a m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 August 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, 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 requirements for graduates of foreign nursing schools.

(b) The necessity of this administrative regulation: The board receives applications from such graduates for licensure in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statute: The board is authorized to set requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the recognition of the Canadian nursing examination as equivalent to the examination used by Kentucky.

(b) The necessity of the amendment to this administrative regulation: The Canadian nursing examination has been determined to not be equivalent.

(c) How the amendment conforms to the content of the authorizing statute: The board is authorized to determine which nursing exams to utilize.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying which exams are recognized.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure in Kentucky who have taken the Canadian nursing exam, 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: They will be required to take the NCLEX examination.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.

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

(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
(Amendment)

301 KAR 1:015. Boats and motor restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625, 150.990, 235.280, 235.990

STATUTORY AUTHORITY: KRS 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of this state. KRS 150.620 and 150.625 authorize the department to promulgate administrative regulations governing lands and waters it has acquired. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) Except as otherwise specified in this section, a person shall not operate on the lakes listed in this administrative regulation:

(a) A houseboat;

(b) A monohull boat, with a centerline length exceeding eighteen (18) feet, six (6) inches;

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet;

(d) A boat motor without an underwater exhaust; or

(e) Except in a designated skiing zone, a boat faster than idle speed when passing a boat with an occupant actively engaged in fishing.

(2) A person shall not operate:

(a) A monohull boat with a centerline length exceeding twenty-two (22) feet on:

1. Guist Creek Lake;
2. Lake Malone; or
3. Cedar Creek Lake.

(b) A pontoon boat with a float or decking exceeding thirty (30) feet on:

1. Lake Malone;
2. Lake Beshear; or
3. Cedar Creek Lake.

(3) Length restrictions in this section shall not apply to a canoe.

(4) No person shall operate a personal water craft as defined in KRS 253.010 on Cedar Creek Lake.

Section 2. A person shall not operate an electric or an internal combustion boat motor on:

(1) Lake Chumley, Lincoln County;

(2) Dennie Gooch Lake, Pulaski County;

(3) Martin County Lake, Martin County; and

(4) Kingdom Come Lake, Harlan County.

Section 3 A person shall not operate an internal combustion boat motor on:
(1) Carter Caves Lake, Carter County,
(2) Spurlington Lake, Taylor County;
(3) Marion County Lake, Marion County;
(4) Lake Washburn, Ohio County;
(5) Bert Combs Lake, Clay County;
(6) McNeely Lake, Jefferson County;
(7) Lake Mauzy, Union County;
(8) Carpenter Lake and Kingfisher Lakes, Daviess County;
(9) Metcalfe County Lake, Metcalfe County;
(10) Briggs Lake, Logan County,
(11) Big Turner Lake, Ballard County;
(12) Little Turner Lake, Ballard County;
(13) Shelby Lake, Ballard County;
(14) Mitchell Lake, Ballard County;
(15) Happy Hollow Lake, Ballard County;
(16) Burnt Slough, Ballard County,
(17) Butler, Ballard County;
(18) Sandy Slough, Ballard County;
(19) Long Pond, Ballard County;
(20) Cross Slough, Ballard County;
(21) Little Green Sea, Ballard County;
(22) Burnt Pond, Ballard County;
(23) Arrowhead Slough, Ballard County;
(24) Deep Slough, Ballard County;
(25) Beaver Dam Slough, Ballard County;
(26) Cypress Slough, Ballard County;
(27) Twin Pockets Slough, Ballard County;
(28) Lake Reba, Madison County;
(29) Lincoln Homestead Lake, Washington County;
(30) Goose, Muhlenberg County;
(31) Island, Ohio County;
(32) South, Ohio County;
(33) Lebanon City Lake, Marion County, or
(34) Mill Creek Lake, Wolfe County.

Section 4. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:
(1) Shanty Hollow Lake, Warren County;
(2) Bullock Pen Lake, Grant County;
(3) Boltz Lake, Grant County;
(4) Kincaid Lake, Pendleton County;
(5) Elmer Davis Lake, Owen County;
(6) Beaver Creek Lake, Anderson County;
(7) Corinth Lake, Grant County; and
(8) Swan Lake, Ballard County.

Section 5. A person shall not operate:
(1) A boat motor larger than 150 horsepower on Lake Beshear, or Lake Malone; unless provided by subsection 2 of this section.
(2) At Lake Malone, motorboats with 200 horsepower or less shall be permitted from the first weekend after Labor Day through the first weekend prior to Memorial Day.
(3) [(2)] A motorboat faster than idle speed on:
(a) Carnico Lake, Nicholas County;
(b) Greenbo Lake, Greenup County;
(c) Pan Bowl Lake, Breathitt County; or
(d) Wilgreen Lake, Madison County.

Section 6. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:
(1) Herb Smith/Cranks Creek Lake; and
(2) Martins Fork Lake.

W. JAMES HOST, Secretary
DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 12, 2005 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23rd, 2005, at 8 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 40601. 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270 ext. 206, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Cara Jarrell
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the size of boats and motors that can be used on small lakes for safety reasons and to minimize the interference with other users.
(b) The necessity of the administrative regulation: To limit the size of boats and motors on small lakes to insure public safety and to minimize interference with other users.
(c) How does this administrative regulation conform to the authorizing statute: KRS 235.280 authorizes the department to promulgate administrative regulations necessary to govern the fair, reasonable, equitable, and safe use of all waters of this state.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.620 and 150.625 and allow fair, reasonable, equitable, and safe use of the waters that the department has acquired.
(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 existing regulation has a 150 horsepower maximum motor size allowed on Lake Malone. The amendment allows for the use of motorboats with 200 horsepower or less motors on Lake Malone from the first weekend after Labor Day through the first weekend prior to Memorial Day.
(b) The necessity of the amendment to this administrative regulation: To permit safe use of public waters and to minimize interference with other users. To allowing use by boats with up to 200 horsepower motors during the nonrecreational (low use) season that extending from after Labor Day to the weekend before Memorial Day. This change will maintain safety, reduce interference, and allow users (mainly anglers) with motors larger than 150 horsepower access to the lake during the low use time period.
(c) How does the amendment conform to the authorizing statutes: See (c) above.
(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 boat on Lake Malone.
(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: Boaters will be minimally affected. The amendments to this administrative regulation will not affect Kentucky boaters negatively. Safety will be maintained and interference minimized at the lake while allowing boats (mainly anglers) with larger motors use of the lake during the normally low use time period.
(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 current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations including water patrol.

(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 because all people who boat at Lake Malone will be treated the same

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO KRS 150.025, 150.280, 150.290, 150.450, 150.485

STATUTORY AUTHORITY: KRS 150.025, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 provides that no person shall propagate or hold wildlife without a permit. This administrative regulation establishes the requirements for obtaining a permit and the requirements that shall be followed by permit holders.

Section 1. Definition. "Aquatic organisms" means fishes, frogs, crayfish and other aquatic vertebrates and invertebrates.

Section 2. Propagation Permit Requirements and Application Procedures. (1) Before acquiring or propagating aquatic organisms, a person shall obtain a permit.

(2) Permit applicants may obtain the Fisheries Commercial Propagation Application form from the department.

Section 3. Acquisition of Brood Stock from Public Waters. (1) A permit holder may obtain from public waters a maximum of 1,500 minnows or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both minnows and crayfish.

(3) A wildlife and boating officer shall supervise the acquisition of brood stock from public waters.

(4) Permit holders shall use gear authorized by 301 KAR 1:130, Live bait for personal use, to acquire aquatic organisms from public waters.

(a) Upon request at the time of application for a permit, the department may authorize applicants to use seines larger than ten (10) feet in length, gillnets, and other fish collection gears.

(b) Permit holders shall attach a metal tag, furnished by the department, to authorized seines over ten (10) feet, gillnets, and other fish collection gears showing:

1. The name of the owner;
2. Gear type ~~[The length of the seine]~~; and
3. The date the permit expires.

(c) Permit holders shall use these approved fish collection gears ~~[seines only]~~ in waters designated in the application.

Section 4. Inspections of Facilities and Revocation of Permits. (1) The permit holder shall allow a wildlife and boating officer to inspect his facilities.

(2) If the officer finds a violation of the terms of this administrative regulation, the department shall immediately revoke the permit.

(3) Fees paid for revoked permits shall not be refunded.

Section 5. Sale of Aquatic Organisms. Permit holders may sell propagated aquatic organisms.

Section 6. The department may issue a permit with no fee to elementary, middle and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes

Section 7. Incorporation by Reference. (1) "Fisheries Commercial Propagation Permit Application", 11/2003 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. and 4.30 p.m.

W. JAMES HOST, Secretary
JON GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 12, 2005 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23rd, 2005, at 8.30 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 40601. 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270 ext. 206, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cara Jarrell

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the requirements for obtaining a permit and the requirements that shall be followed by permit holders.

(b) The necessity of the administrative regulation: To establish the requirement that must be followed by a person wanting to propagate aquatic organisms including the species that are to be transported and propagated.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.280 authorizes the department to promulgate administrative regulations necessary for a person to propagate or hold wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.280 by identifying the species of wildlife that will be propagated to prevent the release of wildlife that could be potentially damaging to native ecosystems.

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

(a) How the amendment will change the existing administrative regulation: The amendment to the regulation will allow propagators the use of additional gear to harvest commercially-produced fish.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow propagators use of additional gear to harvest propagated fish. For example, gillnets to harvest paddlefish from propagation waters. The use of this gear by propagators was previously illegal.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(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 propagate aquatic organisms in private waters of the commonwealth.

(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: Fish propagators will be able to harvest propagated fish with gear that had previously been illegal No negative impact will occur.

(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 current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations including the inspection of the aquaculture facilities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. 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 will be increased

(9) TIERING: Is tiering applied? Tiering was not used because all people who propagate fish in Kentucky will be treated the same

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150 025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150 025 authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and creel and the areas from where fish and creel may be taken. This administrative regulation establishes the areas where commercial fishing is permitted.

Section 1. Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing.

(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;

(b) Big Sandy River from its junction with Ohio River upstream to junction of Levisa and Tug Forks;

(c) Levisa Fork from its junction with Big Sandy River upstream to 200 yards below mouth of Paint Creek in Johnson County;

(d) Cumberland River from its junction with Ohio River upstream to Highway 62 bridge;

(e) Eagle Creek from its junction with Kentucky River upstream to Highway 22 bridge in Grant County;

(f) Green River from its junction with Ohio River upstream to 200 yards below Lock and Dam 6;

(g) Highland Creek from its junction with Ohio River upstream to Rock Ford Bridge in Union County;

(h) Kentucky River from its junction with Ohio River upstream to junction of North and Middle Forks of Kentucky River;

(i) North Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Walker's Creek;

(j) South Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Cow Creek;

(k) Licking River from its junction with Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;

(l) Mississippi River from the mouth of Ohio River downstream to the Tennessee line;

(m) Ohio River from its junction with Mississippi River upstream to West Virginia state line except those segments of the river that extend below the following locks and dams wherein slat baskets are the only piece of commercial gear allowed except for the first 200 yards below the dam as prescribed by KRS 150.445:

1 Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

2 Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

3. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall.

4 J.T Myers [~~Uniontown~~] Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.

5. Newburgh [~~J. T. Meyers~~] Dam downstream to a line perpendicular to the end of the outer lock wall

6 Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall.

7. McAlpine Dam downstream to the K&I railroad bridge.

8. Markland Dam downstream to a line perpendicular to the end of the outer lock wall.

9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

10. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(n) Pond River from its junction with Green River upstream to Highway 62 bridge;

(o) Panther Creek from its junction with Green River upstream to head of creek;

(p) Rough River from its junction with Green River upstream to Highway 69 bridge at Dundee, Kentucky;

(q) Tennessee River from its junction with Ohio River upstream to River Mile 17.8,

(r) Tradewater River from its junction with Ohio River upstream to bridge; and

(s) Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

(2) Lakes The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as noted below:

(a) Barkley;

(b) Cumberland Lake is closed above the confluence of Koger Creek on the Big South Fork Tributary;

(c) Herrington;

(d) Kentucky;

(e) Nolin;

(f) Rough River;

(g) Overflow lakes directly connected to the Mississippi and Ohio Rivers;

(h) Dewey Lake is open uplake to Buffalo Bridge; and

(i) Barren Lake.

W. JAMES HOST, Secretary

DR. JONATHAN GASSETT, Commissioner

APPROVED BY AGENCY: July 12, 2005

FILED WITH AGENCY: July 12, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23rd, 2005, at 9 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 40601. 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Cara Jarrell, Attorney Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270 ext 206, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Cara Jarrell

(1) Provide a brief summary of:

(a) What the administrative regulation does. To establish the procedures for taking fish and creel and the areas from where fish and creel may be legally taken

(b) The necessity of the administrative regulation: Establishes the areas where commercial fishing is permitted

(c) How does this administrative regulation conform to the authorizing statute: KRS 150 025 authorizes the department to promulgate administrative regulations necessary to establish procedures for commercial fisherman as to methods of taking fish and creel and the areas that are open to legal commercial fishing.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150 025 and regulate or restrict places taking is permitted and by promulgate regulations that apply to a limited area of the state.

(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: Two naming errors exist in the current regulation in Section 1, Subsection M, numbers 4 and 5. In number 4, Uniontown should be names J. T. Myers as the name was changed and in number 5, J. T. Meyers should be named Newburgh. The amendment only corrects naming errors.

(b) The necessity of the amendment to this administrative regulation: To correctly name areas listed in the regulation to avoid confusion and potential problems for commercial fisherman.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(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: Commercial fisherman who fish the Ohio River.

(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: Commercial fisherman will not be affected as the amendment only involves changes in names.

(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 current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations including water patrol.

(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 because all people who commercial fish in the Ohio River will be treated the same.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150 470, 150 990(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150 470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150 025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing

Section 1. Definitions (1) "Artificial bait" means a lure or fly:

(a) Made of.

1. Wood,
2 Metal;
3. Plastic,
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material, and

(b) Not having attached:

1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6 Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) day or have in possession while fishing

(3) "Daylight hours" are defined by KRS 150.010(6).

(4) ~~["Delayed harvest stream" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.~~

~~(5)~~] "Kentucky bass" means the following with a patch of teeth on its tongue:

(a) Largemouth bass;

(b) Kentucky bass; or

(c) Coosa bass.

(5) [~~(6)~~] "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) [~~(7)~~] "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.

(7) [~~(8)~~] "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(8) [~~(9)~~] "Release" means to return a fish:

(a) In the best possible physical condition;

(b) Immediately after removing the hook;

(c) To the water from which it was taken; and

(d) In a place where the fish's immediate escape shall not be prevented.

(9) "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.

(10) "Single hook" means a hook with no more than one (1) point.

(11) "Size limit" means the minimum legal length of a fish.

(12) "Slot limit" means that a person:

(a) Shall release fish within a specified minimum and maximum size; and

(b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall ob-

serve the following daily possession and size limits

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit

(c) Sauger, walleye, and their hybrids daily limit, singly or in combination, six (6); possession limit, twelve (12), size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger [and its hybrids. daily limit, ten (10), possession limit, twenty (20), size limit, fifteen (15) inches.

(d) Sauger: daily limit, ten (10), possession limit, twenty (20), no size limit].

(d) [(e)] Muskellunge: daily limit, one (1), [daily and] possession limit, two (2); size limit, thirty (30) inches.

(e) [(f)] Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.

(f) [(g)] White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15) [thirty (30)]; possession limit, thirty (30) [sixty (60)]; [no] size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) [(h)] Striped bass [and its hybrids]: daily and possession limit, five (5); size limit, fifteen (15) inches.

(h) [(i)] Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit

(i) [(j)] Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily limit, twenty (20); possession limit, forty (40); no size limit

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish.

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake, including:

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge:

1. [White bass, yellow bass, striped bass and their hybrids, singly or in combination daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

2.] Crappie size limit, nine (9) inches.

2. [3.] Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Beaver Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(5) Bert Combs Lake. A person shall not possess shad or use shad for bait.

(6) Beshears Lake: channel catfish. size limit, twelve (12) inches.

(7) Boltz Lake.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(8) Briggs Lake. a person shall not possess shad or use shad for bait.

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge. size limit, forty (40) inches[, daily and possession limit, one (1) fish].

(10) Bullock Pen Lake: channel catfish: size limit, twelve (12) inches

(11) Camico Lake: largemouth bass, size limit fifteen (15) inches.

(12) Carpenter Lake. A person shall not possess shad or use shad for bait.

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(14) Carter Caves State Park Lake.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: daily limit, three (3) fish; possession limit six (6) fish; size limit, fifteen (15) inches.

(c) A person shall not possess shad or use shad for bait.

(15) Cave Run Lake.

(a) Largemouth bass: slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass: size limit, sixteen (16) inches.

(16) Cedar Creek Lake.

(a) Largemouth bass: size limit, twenty (20) inches; daily limit: one (1) fish.

(b) Crappie: size limit, nine (9) inches; daily limit: fifteen (15) fish.

(c) Bluegill and Redear sunfish (shellcracker): daily limit: thirty (30) fish, singly or combined.

(d) Channel catfish: size limit, twelve (12) inches; daily limit: four (4) fish.

(e) A person shall not possess shad or use shad for bait.

(17) Chimney Top Creek.

(a) Brown trout: size limit, sixteen (16) inches; creel limit, one (1), artificial bait only.

(18) Corinth Lake.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(19) [(18)] Cumberland Lake.

(a) Largemouth: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit shall be eighteen (18) inches.

(c) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(d) Crappie: size limit, ten (10) inches

(20) [~~(19)~~] Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches

(21) [~~(20)~~] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries

(a) Brown trout: size limit, twenty (20) inches; creel limit, one (1).

(b) Rainbow trout: slot limit, fifteen (15) to twenty (20) inches; creel limit five (5) fish, which shall not include more than one (1) fish greater than twenty (20) inches; and

(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle

(22) [~~(21)~~] Cyprus AMAX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas. On impounded waters of the area:

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6)

(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).

(c) Channel catfish: daily and possession limit, four (4).

(d) A person shall not fish:

1. Except during daylight hours; or

2. On Starfire Lake between January 1 and May 31.

(23) [~~(22)~~] Dale Hollow Lake

(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long

(b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10), size limit, fourteen (14) inches.

(d) ~~[Muskellunge: daily limit, one (1).~~

~~(e)~~] Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(e) [~~(f)~~] Largemouth bass: size limit, fifteen (15) inches;

(f) [~~(g)~~] Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) [~~(h)~~] Crappie: Size limit, ten (10) inches; daily limit, fifteen (15).

(24) [~~(23)~~] Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(25) [~~(24)~~] Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) A person shall not fish except with an artificial bait.

(b) Brown trout: size limit, fifteen (15) inches.

~~[(25) Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40), size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.]~~

(26) Dog Fork, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(27) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

(28) Elmer Davis Lake.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(29) Fishtrap Lake.

(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.

~~[(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.]~~

(30) Game Farm Lakes.

(a) A person shall not possess shad or use shad for bait

(b) Upper Game Farm Lake:

1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6); and

2. Channel catfish: daily limit, four (4); possession limit, eight (8)

(c) Lower Game Farm Lake:

1. A person thirteen (13) years or older shall not fish; and

2. Daily limit, three (3) fish of any species.

(31) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5) fish; possession limit, ten (10) fish; size limit, fifteen (15) inches.

(32) General Butler State Park Lake. Largemouth bass: size limit, fifteen (15) inches.

(33) Grayson Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

~~[(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: size limit, fifteen (15) inches, daily and possession limit, five (5) fish.]~~

(34) Greenbo Lake.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish

(35) Green River Lake. Crappie: size limit, nine (9) inches.

(36) Guist Creek Lake. Channel catfish: size limit twelve (12) inches.

(37) ~~[(a) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.~~

~~(b) Channel catfish: size limit, twelve (12) inches.~~

~~(37) Herrington Lake: White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20), possession limit, forty (40), size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.~~

~~(38)~~] Jerrico Lake. Largemouth bass: size limit, fifteen (15) inches.

(38) [~~(39)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(39) [~~(40)~~] Kincaid Lake: channel catfish: size limit, twelve (12) inches.

(40) [~~(41)~~] Laurel River Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit shall be eighteen (18) inches.

(c) Crappie: size limit, nine (9) inches; possession limit, thirty (30) fish.

(41) [~~(42)~~] Lebanon City Lake (Fagan Branch). Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(42) [~~(43)~~] Leary Lake.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: daily limit, three (3); possession limit, six (6).

(c) Bluegill: daily limit, fifteen (15), possession limit, thirty (30).

(d) Channel catfish: daily limit, four (4); possession limit, eight (8).

(43) [~~(44)~~] Lincoln Homestead Lake.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.

(c) Channel catfish: daily limit, four (4); possession limit, eight (8).

(d) A person shall not possess shad or use shad for bait.

(44) [~~(45)~~] Lake Malone.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(45) [~~(46)~~] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.
(46) [(47)] Mauzy Lake. Largemouth bass; no size limit.
(47) [(48)] McNeely Lake. A person shall not possess shad or use shad for bait.
(48) [(49)] Mill Creek Lake, in Powell County.
(a) Largemouth bass, size limit, fifteen (15) inches; daily limit, three (3), possession limit, six (6) fish.
(b) A person shall not possess shad or use shad for bait
(49) [(50)] Nolin River Lake, whose impoundment extends up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.
(50) [(51)] Ohio River.
(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.
(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30), no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.
(51) [(52)] Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge [Highways 460 and 40 bridges]. Trout: size limit, sixteen (16) inches; daily limit one (1) fish; artificial bait only.
(52) [(53)] Paintsville Lake.
(a) Largemouth bass [and smallmouth bass]: slot limit, twelve (12) to fifteen (15) inches.
(b) Smallmouth bass: size limit, eighteen (18) inches.
(53) [(54)] Parched Corn Creek, Wolfe County. A person shall:
(a) Not fish except with an artificial bait with a single hook;
(b) Release brook trout.
(54) [(55)] Peabody Wildlife Management Area, for Goose Lake, Island Lake or South Lake.
(a) Largemouth bass: Size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).
(b) Bluegill: daily and possession limit, fifteen (15).
(c) Redbreast sunfish: daily and possession limit, fifteen (15).
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).
(e) Walleye: size limit, fifteen (15) inches, daily and possession limit, one (1).
(f) A person shall not:
1. Fish:
a. Except during daylight hours; and
b. From October 15 through March 15; or
2. Take frogs.
(55) [(56)] Pennyrile Lake: largemouth bass, size limit, twelve (12) to fifteen (15) inch protective slot limit.
(56) Pikeville City Lake: Catch and release largemouth bass fishing (no harvest).
(57) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.
(58) Lake Reba.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).
(b) A person shall not possess shad or use shad for bait.
(59) Rough River Lake.
(a) Crappie: size limit, nine (9) inches.
(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
~~[(c) White bass: for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.~~
~~(d) Hybrid striped bass: for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.]~~
(60) Shanty Hollow Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(61) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
(a) Not fish except with an artificial bait with a single hook, and
(b) Release brook trout.
(62) Spurlington Lake A person shall not possess shad or use shad for bait
(63) Sympson Lake. largemouth bass. size limit, fifteen (15) inches.
(64) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limits, nine (9) inches
~~[(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, ten (10), size limit, no more than five (5) in daily limit shall be fifteen (15) inches or longer.]~~
(65) Taylorsville Lake WMA ponds (as designated).
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit one (1).
(b) Channel catfish. daily limit, four (4) fish.
(66) Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.
(67) Wood Creek Lake.
(a) Crappie. size limit, nine (9) inches.
(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.
(68) Yatesville Lake: largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout [~~Delayed Trout Harvest~~]. (1) There shall be seasonal catch and release for [a ~~delayed~~] trout season from [~~harvest~~] October 1 - March 31.
(2) A person shall use artificial bait and release trout.
(3) The following streams shall be open to the seasonal catch and release for trout season [~~delayed harvest~~]:
(a) Bark Camp Creek in Whitley County;
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;
(d) Cane Creek in Laurel County;
(e) [(d)] Casey Creek in Trigg County;
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
(g) [(e)] East Fork Clarks River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;
(h) [(f)] East Fork of Indian Creek in Menifee County;
(i) [(g)] Elk Spring Creek in Wayne County;
(j) [(h)] Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
(k) [(i)] Lick Creek in Simpson County;
(l) [(j)] Middle Fork Red River in Natural Bridge State Park in Powell County;
(m) [(k)] Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and
(n) [(l)] Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.
(4) The seasonal catch and release for trout [~~delayed harvest~~] season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) Creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

W. JAMES HOST, Secretary
DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 12, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 9 30 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 5 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cara Jarrell

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the size limits of and daily-possession limits for fish that can be taken from Kentucky waters.

(b) The necessity of the administrative regulation: To effectively manage the fish populations of Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: KRS 235.025(1) authorizes the department to promulgate administrative regulations necessary to establish fishing guidelines to protect fish species from overharvest. This administrative regulation is necessary to establish fish size limits, daily catch limits, and field possession limits for fishing.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by limiting the number and size of fish that may be taken from Kentucky waters. This will ensure the conservation of fish species.

(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 establish a creel limit on redear sunfish, reduces statewide size limits and/or creel limits on walleye, white bass, and muskellunge and establish new trout fishing opportunities for trout at three locations.

(b) The necessity of the amendment to this administrative regulation: To effectively manage the fisheries resources of Kentucky. For example, combining white bass and hybrid striped bass creel limits will eliminate angler misidentification, simplify the regulation, and better allocate the resource.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(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 fish the waters of the commonwealth.

(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: Anglers will be minimally affected. The amendments to this administrative regulation will not affect Kentucky anglers negatively. Recent angler attitude surveys indicate public support for all amendments. These changes will result in a better allocation of the fishery resources, increase angler satisfaction, and establish new fishing opportunities.

(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 current budget of the Department of Fish and Wildlife Resources' Division of Law Enforcement already oversees the enforcement of administrative regulations including water patrol.

(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, because all people who fish the waters of Kentucky will be treated the same.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:001. Prelicensing courses of study; instructors.

RELATES TO: KRS 304.9-105 [~~304-09~~]

STATUTORY AUTHORITY: KRS 304 2-110, 304.9-105, 304.9-230, 304.9-513

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304 2-110 authorizes [~~provides that~~] the Executive Director [~~Commissioner~~] of Insurance to [~~may~~] promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304 1-010. KRS 304.9-105 requires [~~that~~] the executive director to [~~commissioner~~] promulgate administrative regulations to mandate a [~~forty (40) hours of~~] prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires [~~that~~] the executive director to [~~commissioner shall~~] promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-513 authorizes the executive director [~~commissioner~~] to promulgate administrative regulations relating to prelicensing courses for rental vehicle managing employees. This administrative regulation establishes the guidelines for instructors and for courses of instruction to be completed by each individual [~~person~~] applying for [~~either~~] an agent, specialty credit insurance managing employee, or rental vehicle managing employee license in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

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

Section 2. (1) Except for individuals applying for a limited line of authority as identified in KRS 304.9-230, a specialty credit insurance managing employee license, or a rental vehicle managing employee license, all agent applicants shall complete an approved course of study, which shall include a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for which the agent is applying. Agent applicants shall complete a prior-approved course of [~~prelicensing~~] classroom or self study [~~course of study~~] which shall cover the subject matter included in the office's [~~Insurance Department's~~] current study outlines or their equivalent.

(2) Agent applicants for a rental vehicle managing employee license shall complete a prior-approved course of classroom or self-study [~~correspondence~~] instruction which shall cover the subject matter included in the office's [~~Insurance Department's~~] current study outline, or its equivalent, for this license.

(3) An outline of the content of each prelicensing course of

study, together with the name and qualifications of the instructors, shall be submitted in writing to, and approved by, the office's [~~Department of Insurance~~] prior to authorized use, and shall be renewed biennially.

(4) An applicant for a limited line of authority as identified in KRS 304.9-230 shall not be required to complete any prelicensing course of study for this line of authority.

(5) An applicant for a specialty credit insurance managing employee license shall not be required to complete a prelicensing course of study for this license.

Section 3 [~~2.~~] Prelicensing courses of study and instructors filed with the executive director [~~commissioner~~] shall be accompanied by the fees as set forth in KRS 304 4-010.

Section 4. A prelicensing course of study is valid for one (1) year from the date of completion

Section 5. The prelicensing provider shall submit proof of completion of a course of study on Form CPL-01, as prescribed in 806 KAR 9 340, or electronically through the office's Web site for each applicant

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m , at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 establishes the guidelines for instructors and for courses of instruction to be completed by each person applying for an agent, specialty credit insurance managing employee, or rental vehicle managing employee license in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the statutory requirements for a prelicensing course of study, which is required for issuance of an individual insurance agent license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-105 requires the executive director to promulgate administrative regulations to mandate a course of prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the executive director to promulgate administrative regulations regarding prelicensing course of study for limited lines of authority. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations relating to prelicensing courses for rental vehicle managing employees This administrative regulation sets forth the specific education requirements that must be completed prior to licensing for an agent, specialty credit managing employee, and rental vehicle agent to augment the general requirement of prelicensing study in the statute. It also requires courses of study and instructors to be filed with the office, and limits the use of the course results to one year after the date of completion

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory requirement of prelicensing course of study by explaining the minimum number of hours required, the manner in which the course may be completed, the process that a provider must follow to receive approval of the course, and the length of time that results of a course are valid.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. It also changes the prelicensing course of study to 40 hours of life and health, 40 hours of property and casualty, or 20 hours per line of authority to be consistent with KRS 304 9-105. This is a National Association of Insurance Commissioners uniform resident licensing standard and conforms to the changes in 2005 Ky. Acts ch. 143. It provides that a prelicensing course of study is valid for 1 year after completion and requires providers to file proof of completion on Certificate of Prelicensing Course Completion Form CPL-01 or electronically through the Office's Web site.

(b) The necessity of the amendment to this administrative regulation: This amendment provides consistency between the statutes and this regulation and clarifies how long a prelicensing course of study may be used with an application. It also requires the provider to file proof of completion.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts Ch. 123, reorganized the Environmental and Public Protection Cabinet and changed "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. The amendment also clarifies that prelicensing education for an agent is tied to the line of authority in the application. The other changes require the provider to file the course results with the Office and limit the use of the course results to 1 year after date of completion.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by prescribing a specific process for prelicensing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit future individual insurance agent applicants.

(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 makes minor changes and should not have a significant impact.

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

(a) Initially: There should not be any cost to implement these changes.

(b) On a continuing basis: There should not be any cost related to the amendments to this regulation 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 will be used to implement and enforce this administrative regulation.

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

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

lishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish or increase fees, directly or indirectly.

(9) TIERING Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all applicants for a specific license.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:020. False or deceptive names, titles, prohibited.

RELATES TO: KRS 304 09, 304.12-130
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides] that the Executive Director [~~Commissioner~~] of Insurance to [may] make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

Section 1. Definition (1) "Executive director" means the Executive Director of the Office of Insurance.

Section 2. No person [~~firm or corporation~~] licensed pursuant to Subtitle 9, KRS Chapter 304, shall, in the conduct of business thereunder, use, or knowingly permit to be used, in his, her, or its behalf, any name, title, letters, degrees, certificate, accomplishment, award, designation or the like, which implies or purports to convey that the [~~such~~] person [~~, firm or corporation~~] possesses a greater skill, knowledge, experience or qualification than is actually a fact, or which exceeds the maximum requirements for licensing under the Insurance Code as defined in KRS 304.1-010.

Section 3. [~~2.~~] Nothing in Section 2 [~~1~~] of this administrative regulation shall prohibit the use of names, titles, letters, degrees, certificates, recognition of accomplishments, awards, designations or the like which have been properly conferred upon a licensee by:

(1) A duly accredited and recognized college or university; or

(2) A duly accredited and recognized professional association or society, when the form and substance of the aforementioned names and titles have been previously filed with and approved by the executive director [~~commissioner~~].

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m., at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P O. Box 517, Frankfort, Kentucky 40602-0517, 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 prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

(b) The necessity of this administrative regulation. This administrative regulation defines acceptable and unacceptable business names for insurance licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.12-130 generally prohibits unfair and deceptive business practices This regulation defines specific deceptive business practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory prohibition against unfair business practices by defining specific unfair practices.

(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 changes "commissioner" to "executive director" to conform with SB 41, Ky. Acts ch. 143 It also deletes the words "firm or corporation" because those entities are included in the definition of "person" in KRS 304.1-020.

(b) The necessity of the amendment to this administrative regulation: The amendment provides consistency between the statutes and this regulation and deletes the redundant reference to firm or corporation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. The amendment also eliminated an unnecessary reference to "firm or corporation" as person is defined in KRS 304.1-020 to include those entities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by making technical changes to reference the correct agency and agency head names and by utilizing uniform terms throughout the administrative regulations within the Insurance Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit approximately 80,000 existing licensees and all future 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 an amendment: This amendment makes technical changes and should have no new effect on the group.

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

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a cost to implement this regulation 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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, 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 or increase fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all licensees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:070. Examinations.

RELATES TO: KRS 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720 [(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) provides that examinations required by Subtitle 9 of the Kentucky Insurance Code shall be developed and conducted in accordance with administrative regulations promulgated by the executive director [~~commissioner~~] KRS 304.9-230(2) requires the executive director [~~commissioner~~] to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) [~~(3)~~] requires the executive director [~~commissioner~~] to promulgate administrative regulations regarding the required training and examination for viatical settlement brokers, and KRS 304.15-270 authorizes the executive director to promulgate regulations to implement KRS 304.15-700 through 304.15-720 [~~licensing of viatical settlement providers and brokers~~]. This administrative regulation restricts the number of times an applicant for an agent's, viatical broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-020, or administrative regulations promulgated thereunder, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

Section 1. Definitions. (1) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an adjuster, agent, consultant, or viatical settlement broker license.

(2) "Executive Director" means the Executive Director of the Office of Insurance.

(3) License" means a document issued by the executive director [~~commissioner~~] indicating that an applicant for an adjuster, agent, consultant, or viatical settlement broker license has complied with applicable requirements of KRS Chapter 304.

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

Section 2. A completed written application for the examination and documentation demonstrating successful completion of any required prelicensing training shall be filed with the executive director [~~commissioner~~] by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 or 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take a written examination shall answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the executive director [~~commissioner~~] Applicable fees, as set out in KRS 304.4-010 and administrative regulations promulgated thereunder, shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", prescribed in 806 KAR 9:340 [~~incorporated by reference~~].

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

(1) For life line of authority, a life examination,

(2) For health line of authority, a health examination,

(3) For property line of authority, a property examination;

(4) For casualty line of authority, a casualty examination;

(5) For personal lines, a property and casualty personal lines examination;

(6) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

(a) For surety limited line of authority, a surety examination;

(b) For travel limited line of authority, a travel examination;

(c) For crop [~~hail~~] limited line of authority, a crop [~~hail~~] examination, and

(d) For limited lines credit limited line of authority, no examination is required.

Section 7. An individual applying for a viatical settlement broker license shall successfully complete a viatical settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b).

The examination shall be given by the executive director [~~commissioner~~] or in accordance with provisions of an agreement the executive director [~~commissioner~~] executes with another state.

Section 8. If an applicant who applies to take [~~takes~~] the examinations required by KRS Chapter 304 does not take an examination or fails to pass an examination within 120 days of the filing of his or her application, the application shall become invalid, unless the executive director [~~commissioner~~] grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the office [~~department~~] in the regular course of business.

Section 9. Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the executive director [~~commissioner~~] within the same one (1) year period. After this period, the applicant shall be retested.

~~[Section 10. Incorporation by Reference. (1) Form 8304, "Examination Retake Form (7/2002 edition)", is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 restricts the number of times an applicant for an agent's, viatical broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or administrative regulations promulgated thereunder, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(b) The necessity of this administrative regulation: This administrative regulation prescribes the examination process for licensees of the Office of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) provides that examinations required by Subtitle 9 of the Kentucky Insurance Code shall be developed and conducted in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) requires the executive director to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.9-320 requires the applicant for a consultant license to pass a written examination. KRS 304.15-720 requires the executive director to promulgate administrative regulations regarding licensing of viatical settlement providers and brokers. This administrative regulation restricts the number of times an applicant for an agent's, viatical broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or administrative regulations promulgated thereunder, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing and examination by specifying the minimum passing score, procedures to retake an examination, the examination required for each line of authority and the length of time in which results are valid.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. It also deletes the unnecessary word "hail" from the regulation leaving the uniform word "crop" in place. The form is being removed from this regulation and incorporated into a new forms regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. The amendment also deletes the unnecessary word "hail."

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation and updating the examination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects future applicants subject to examination.

(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 makes technical changes and should have no new effect on the group.

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

(a) Initially: The Office of Insurance does not anticipate any initial cost to implement this regulation.

(b) On a continuing basis: The Office of Insurance does not anticipate any cost on a continuing basis to implement this regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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 or increase fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation will be applied in the same manner to all applicants who are subject to an examination.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:200. Volume of insurance agent exchange of business.

RELATES TO: KRS 304.9-030, 304.9-080, 304.9-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides] that the Executive Director [~~Commissioner~~] of Insurance to [may] promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-410(3) requires the Executive Director [~~Commissioner~~] of Insurance to promulgate an administrative regulation establishing the amount or volume of business that constitutes the occasional placement of business with insurers the agent is not appointed to represent, as permitted by KRS 304.9-080(5) and 304.9-410(1)(a) and (2). This administrative regulation defines what constitutes occasional placement of business with insurers an agent is not appointed to represent.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

(2) [~~Definition. As used in this administrative regulation:~~] "Total premium" means all payments received from insureds or prospec-

tive insureds as consideration for insurance, including all taxes and surcharges imposed by Kentucky law.

Section 2 Volume of Insurance Agent Exchange of Business (1) An agent holding a license with a line of authority for property, casualty, surety, [~~marine and transportation, or mortgage guaranty~~] or with a limited line of authority as defined in KRS 304 9-230 shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment. Insurance placed by an agent through a residual market mechanism as defined in KRS 304 13-011(8), with a surplus lines insurer pursuant to KRS Chapter 304.10, through a managing general agent as defined in KRS 304.9-085, or through a voluntary risk sharing or market assistance plan pursuant to KRS Chapter 304.46 shall not be considered in determining whether the agent has violated this subsection.

(2) An agent holding a license with a line of authority for life or health or with a line of authority for limited line credit shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment.

Section 3. Business Entity Licensees. For agents designated to act under a business entity agent license, the percentage limitations of Section 2 of this administrative regulation shall be measured by the total premium received by the business entity. Persons designated to act under a business entity agent license are subject to a single overall limit and shall not use their separate licenses to increase the volume of permissible exchange of business.

Section 4. Responsibilities of Insurer; Validity or Insurance Issued in Violation of this Administrative Regulation. (1) An insurer may assume that agents not appointed by the insurer and submitting applications to the insurer have not exceeded the limitations of Section 2 of this administrative regulation. However, an insurer which knows or has reason to know that an agent is in violation of Section 2 of this administrative regulation shall not issue an insurance policy based on an application submitted by this agent.

(2) An insurance policy issued in violation of this administrative regulation is valid and enforceable.

[~~Section 5. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.~~]

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m., at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 defines what constitutes occasional placement of business with insurers that an agent is not appointed to represent.

(b) The necessity of this administrative regulation. This administrative regulation sets specific boundaries on the practice of placing business without an appointment allowed in the statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-410(3) requires the Executive Director of Insurance to promulgate an administrative regulation establishing the amount or volume of business that constitutes the occasional placement of business with insurers the agent is not appointed to represent, as permitted by KRS 304 9-080(5) and 304.9-410(1)(a) and (2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for occasional placement of business by specifying the meaning of that provision.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to SB 41, Ky. Acts ch. 143. It also deletes the terms "marine and transportation" and "mortgage guaranty", agent lines of authority that have sunset.

(b) The necessity of the amendment to this administrative regulation: To provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit the approximately 70,000 individuals who are licensed as insurance agents.

(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 makes technical changes and should have no new effect on the group.

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

(a) Initially: The Office of Insurance does not anticipate any initial cost to implement this regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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 or increase fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation will be applied in the same manner to all licensed insurance agents.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:220. Continuing education.

RELATES TO: KRS 304.9-295, 304 15-700(3)
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(5), (7), 304 15-720 [(6), (8), 304.15-700(3)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(5) and (7) [(6) and (8)] authorize the executive director [commissioner] to limit the number of continuing education hours carried forward to the subsequent biennium [and to prescribe the form used to certify completion of a continuing education course]. KRS 304.15-720 [15-700(3)] requires the executive director [commissioner] to promulgate administrative regulations to implement KRS 304.15-700 to 304 15-720, Kentucky's Viatical Settlement Law [that are necessary for the licensing of viatical settlement brokers]. This administrative regulation establishes procedures for approval of agent and viatical settlement broker continuing education courses and obtaining credit for attending continuing education courses.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.
(2) "Office" means the Office of Insurance.
(3) [Definition.] "Provider" means the sponsor of a continuing education course.

Section 2. Continuing Education Course Requirements. (1) A continuing education course shall be offered by a provider approved by the executive director [commissioner], pursuant to this section [Section 2 of this administrative regulation].
(a) The application for approval of a provider shall be submitted on the "Provider Approval Application" Form, as prescribed in 806 KAR 9:340; and
(b) The information shall show that the provider is qualified, through knowledge or experience, to provide prelicensing or continuing education courses and that the provider is properly authorized to charge a course fee, if any.
(2) A continuing education course shall be filed with and approved by the executive director [commissioner] at least sixty (60) days in advance of advertising unless the executive director [commissioner], in his or her sole discretion, waives the sixty (60) day period.
(3) All applications for approval of a continuing education course shall be submitted on the "Course Approval Application" Form, as prescribed in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form", as prescribed in 806 KAR 9:340, and an initial fee of ten (10) dollars which shall be deemed earned when paid and shall not be refundable. After review and assignment of the number of credit hours, the executive director [commissioner] shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010. A continuing education course shall not be approved until all fees are paid.
(4) The executive director [commissioner] shall approve a continuing education course if it meets the following requirements:
(a) The continuing education course shall contribute directly, at a professional level, to the competence of the licensee including the following subjects:
1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Business environment, management, or organization;
9. Ethics; and
10. Other topics approved by the executive director [commissioner], and
(b) Course development and presentation:
1. The continuing education course shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;
2. The course shall be developed by persons who are qualified in the subject matter and instructional design;
3. The course content shall be current;
4. Each course shall have a written outline and study materials or texts;
5. Information shall show that the instructors are qualified, through training or experience, to instruct the continuing education course competently and shall be submitted on the "Instructor Approval Application", as prescribed in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form", as prescribed in 806 KAR 9:340;
6. The number of participants and physical facilities shall be consistent with the teaching method specified; and
7. All courses shall include some means of evaluating quality.
(5) Continuing education credit shall not be provided for:
(a) Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;
(b) Committee service of professional organizations;
(c) Computer science courses unless approved by the executive director [commissioner];
(d) Motivational or sales training courses; and
(e) Any course not in accordance with Section 2(4) of this administrative regulation.
(6) Any material change in a continuing education course shall be filed with and approved by the executive director [commissioner] prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.
(7) Biennially, providers shall renew approval of continuing education courses and instructors [at the end of each continuing education biennium]. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 4:010 to the executive director [commissioner] prior to June 30 of even-numbered years [immediately preceding the next continuing education biennium].

Section 3. Measurement of Credit. (1) Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction or participation.
(2) A course shall not be credited for continuing education by a licensee more than once per continuing education biennium.
(3) Licensees shall be limited to a maximum of twelve (12) credit hours for self-study [correspondence] courses per continuing education biennium.
(4) A self-study [correspondence] course shall not be approved for continuing education credit of more than twelve (12) hours unless the course is identified by KRS 304.9-295(5) [(4)](a)1 to 7 and 10.

Section 4. Reasons for Withdrawal. The executive director [commissioner] may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:
(1) The continuing education course teaching methods or course content no longer meet the requirements of KRS 304.9-295 or Sections 2 and 3 of this administrative regulation or the course has been materially changed without being filed with and approved by the executive director [commissioner], in accordance with Section 2 of this administrative regulation;
(2) The continuing education course provider has certified to the executive director [commissioner] that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;
(3) The continuing education course provider fails to certify to the executive director [commissioner] that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or
(4) There is other good and just cause to withdraw approval of

a continuing education course, provider, or instructor.

Section 5. Proof of Completion (1) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the executive director ~~[commissioner]~~ the names of all licensees who satisfactorily completed the continuing education course. The certification of completion required by this section for a classroom course shall be submitted on the "Continuing Education Course Attendance Roster" Form, as prescribed in 806 KAR 9:340 The certification of completion required by this section for a self-study ~~[or correspondence]~~ course shall be submitted on the "~~[Approved]~~ Continuing Education Certificate of Completion" Form, as prescribed in 806 KAR 9 340, which the provider shall file with the executive director ~~[commissioner]~~ or shall forward to the licensee for signature and with instructions for the licensee to file with the executive director ~~[commissioner]~~. In addition, the information may be submitted by the provider to the executive director ~~[commissioner]~~ in an electronic format prescribed by the executive director ~~[commissioner]~~.

(2) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least three (3) years The certification required by this subsection shall be on the "~~[Approval]~~ Continuing Education Certificate of Completion" Form, as prescribed in 806 KAR 9:340 The provider of the continuing education course shall retain a copy of the certificate for at least three (3) years Providers of continuing education courses and licensees shall make available to the executive director ~~[commissioner]~~ or his or her designee copies of these certificates upon the request of the executive director ~~[commissioner]~~

(3) Pursuant to KRS 304.9-295(9) ~~[(8)]~~, every licensee shall be responsible for ensuring that his or her continuing education certificates of completion are timely filed with the office ~~[department]~~.

(4) At least six (6) hours of total credit earned per biennium shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed. At least three (3) ~~[two (2)]~~ hours of total credit earned per biennium shall be in ethics. Hours may be classroom, self-study ~~[correspondence]~~, or a combination of both.

(5) Each self-study ~~[correspondence]~~ course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 6. Cancellation and Reinstatement of Licenses. (1) If the office ~~[department]~~ does not receive proof of the fulfillment of a licensee's continuing education requirements for a resident licensee on or before July 30 in even-numbered years, and for a nonresident licensee or a nonresident viatical broker licensee on or before sixty (60) days from the end of the continuing education biennium ~~[July 30 in odd-numbered years]~~, the executive director ~~[commissioner]~~ shall:

(a) Make information of the deficiency available to the licensee ~~[on or before August 5]~~; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form, as prescribed in 806 KAR 9.340, or the "~~[Approved]~~ Continuing Education Certificate of Completion" Form, as prescribed in 806 KAR 9:340, is not received by the office ~~[department]~~ on or before the deadline ~~[August 30]~~.

(2) Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee satisfies the delinquent continuing education requirements, submits a new application with required attachments for a license, and submits the applicable fees.

(3) If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 7. Affidavit for Exemption from Continuing Education. (1) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304 9-295 and shall subject the affiant to suspension or revocation of the agent license.

(2) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may give up the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

Section 8 Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

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

~~(a) Form KYP-01, "Provider Approval Application (2/2003 edition)";~~

~~(b) Form CE/PL-100, "Course Approval Application (2/2003 edition)"~~

~~(c) Form KYF-01, "Filing Fee Submission Form (2/2003 edition)";~~

~~(d) Form CE/PL 200, "Instructor Approval Application" (2/2003 edition)";~~

~~(e) Form CE-300, "Continuing Education Course Attendance Roster (2/2003 edition)"; and~~

~~(f) Form CE-301, "Approved Continuing Education Certificate of Completion (2/2003 edition)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.~~]

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 establishes procedures for approval of agent and viatical settlement broker continuing education courses and ob-

taining credit for attending continuing education courses

(b) The necessity of this administrative regulation. This administrative regulation fulfills the executive director's statutory obligation to specify licensee education forms and processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(6) and (8) authorize the executive director to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.15-720 requires the executive director to promulgate administrative regulations that are necessary for the licensing of viatical settlement brokers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation supplements the general statutory provisions for continuing education and carry over credit hours by specifying the continuing education procedure, the measurement of credit hours, the approval of courses and instructors, the number of hours and distribution of course work, the number of carry over hours, and exemption from continuing education.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. It also changes the continuing education biennium to correspond with the continuing education biennium changes to KRS 304.9-260, which now ends at the end of the individual's birth month. This office must receive proof of continuing education for resident licensees no later than 60 days after the end of the continuing education biennium. This is a uniform National Association of Insurance Commissioners resident licensing and renewal standard. This amendment deletes the forms that were incorporated by reference as those forms have been moved to a single form regulation.

(b) The necessity of the amendment to this administrative regulation: To provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit all licensees subject to continuing 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: This amendment makes technical changes and should have no new effect on the group.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. 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: The amendments to this administrative regulation do not establish any new fees or increase any existing fees. The existing administrative regulation did include a $10 fee for the initial filing of a continuing education course and an additional $5 fee for each additional approved credit hour.

(9) TIERING. Is tiering applied? No, tiering does not apply, because this administrative regulation is applied in the same manner to all licensees subject to continuing education and to all providers filing for approval of continuing education courses.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:250. Specialty credit insurance producer and managing employee.

RELATES TO: KRS 304.9-480, 304.9-485
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [~~provides that~~] the Executive Director [~~Commissioner~~] of Insurance to [~~may~~] promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation establishes the information to be included in the application and amendments to the application for specialty credit insurance producer and managing employee licenses. Also, this administrative regulation establishes the procedures for recordkeeping by the licensed specialty credit insurance producer.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

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

Section 2. Application and Amendments. (1) The license application for a specialty credit insurance producer shall be submitted as a package, and shall include:

(a) Form 8301-BE, as prescribed by 806 KAR 9:340, for the business entity specialty credit insurance producer applicant or the business entity uniform application prescribed by the National Association of Insurance Commissioners; or Form 8301, as prescribed by 806 KAR 9:340, for the individual specialty credit insurance producer applicant or the individual uniform application prescribed by the National Association of Insurance Commissioners; signed by the applicant [~~and the appointing insurer~~];

(b) Form 8301, as prescribed by 806 KAR 9:340, or the individual uniform application prescribed by the National Association of Insurance Commissioners Individual Uniform Application, for each managing employee applicant signed by the applicant [~~and the appointing insurer~~];

(c) Form 8301-BGC, as prescribed by 806 KAR 9:340, for resident specialty credit insurance producer or managing employee applicants;

(d) Form 8301-SC, as prescribed by 806 KAR 9:340, signed by the specialty credit insurance producer applicant and all managing employee applicants; and

(e) [~~(d)~~] The fees specified in KRS 304.4-010 and 806 KAR 4:010 [~~the applicable administrative regulations~~].

(2) A licensed specialty credit insurance producer shall submit an amended Form 8301, Form 8301-BE, or 8301-SC, as prescribed by 806 KAR 9:340, as applicable, no later than thirty (30) days from the date of any change.

Section 3. [~~2.~~] Licensed Managing Employee. (1) A licensed specialty credit insurance producer shall not transact insurance at any business location that does not have a licensed managing employee assigned to that location.

(2) The licensed specialty credit insurance producer shall assume responsibility for the insurance activities of its licensed managing employees.

Section 4. [3.] Unlicensed Employees and Representatives. (1) Upon completion of the required training for unlicensed employees and representatives, the licensed specialty credit insurance producer shall obtain a certification in writing from each unlicensed employee or representative that he or she received the instruction with respect to the required consumer disclosures. The certification shall include the date of the instruction.

(2) The licensed specialty credit insurance producer shall maintain complete records of the certification required by this section at the business location of each unlicensed employee or representative for at least three (3) years

(3) The licensed specialty credit insurance producer shall assume responsibility for the insurance activities of its unlicensed employees and representatives.

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

~~(a) Form 8301-BE "Resident Business Entity License Application (10/2000 edition)",~~

~~(b) Form 8301 "Resident Individual License Application (10/2000 edition)"; and~~

~~(c) Form 8301-SC "Specialty Credit Insurance Producer Supplement to License Application (7/2000 edition)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance at 215 West Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 establishes the information to be included in the application and amendments to the application for specialty credit insurance producer and managing employee licenses. Also, this administrative regulation establishes the procedures for record-keeping by the licensed specialty credit insurance producer.

(b) The necessity of this administrative regulation: This administrative regulation establishes the specific licensing procedures that are referenced generally in the statute and incorporates forms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-485(2)(a) directs the executive director to prescribe application forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will supplement the general statutory provisions for licensing specifying licensing and education procedures and incorporating the current version of forms by reference.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. This regulation will also update the forms to conform to new uniform standards.

(b) The necessity of the amendment to this administrative regulation. The amendments to this regulation are necessary to provide consistency between the statutes and this regulation and to incorporate the most current versions of forms.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. The amendment also updates the forms.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation and updating the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit future specialty credit insurance producer and managing agent employees.

(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 makes technical changes and should have no new effect on the group.

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

(a) Initially: The Office of Insurance does not anticipate any initial cost to implement this administrative regulation.

(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 will be used for 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: No increase in fees or funding is necessary.

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

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all specialty credit insurance producers and managing agent employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:265. Rental vehicle agent and managing employee.

RELATES TO: KRS 304.9-501, 304.9-505, [-]304.9-513
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-513
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [~~provides that~~] the executive director to [~~commissioner may~~] promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky In-

surance Code KRS 304 9-513 authorizes [provides that] the executive director to [commissioner shall] promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. This administrative regulation sets forth the information to be included in the application for rental vehicle agent and managing employee licenses; the requirements for prelicensing education, course examinations, continuing education for rental vehicle managing employees; and recordkeeping for rental vehicle agents and their employees who sell rental vehicle insurance.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

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

Section 2. The license application shall be submitted as a package, and shall include:

(1) Form 8301-BE, as prescribed in 806 KAR 9:340, for the business entity rental vehicle agent applicant or Form 8301, as prescribed in 806 KAR 9:340, for the individual rental vehicle agent applicant signed by the applicant and Form 8302-AP, as prescribed in 806 KAR 9:340, completed by the appointing insurer;

(2) Form 8301, as prescribed in 806 KAR 9:340, for each managing employee applicant signed by the applicant and Form 8302-AP, as prescribed in 806 KAR 9:340, completed by the appointing insurer;

(3) Form 8301-BGC, as prescribed in 806 KAR 9:340, for resident rental vehicle agent or managing employee applicants;

(4) Form 8301-RV, as prescribed in 806 KAR 9:340, signed by the rental vehicle agent applicant and each managing employee applicant; and

(5) [(4)] The fees specified in KRS 304.4-010 and 806 KAR 4:010.

Section 3. [2.] (1) A licensed rental vehicle agent shall keep current the information required to be disclosed in its application for license by reporting within thirty (30) days all material changes and additions on applicable forms required in Section 1 of this administrative regulation on [or Record Correction Form,] Form 8303, as prescribed in 806 KAR 9:340.

(2) A business entity licensed as a rental vehicle agent shall not sell, solicit, or negotiate insurance at any business location that does not have a licensed managing employee assigned to that location.

Section 4. [3.] A licensed rental vehicle agent shall maintain a current list of every unlicensed employee authorized to act under the license and the name of the assigned licensed managing employee for each business location.

Section 5. [4.] (1) The licensed rental vehicle agent shall:

(a) Adopt and utilize the office's [department's] preapproved prelicensing course of study for its managing employees; or

(b) Submit to the executive director [commissioner] for approval a prelicensing course of study for its managing employees.

(2) The prelicensing course of study shall include at a minimum the materials designated in a course outline provided by the office [department].

(3) The licensed rental vehicle agent shall be responsible for the insurance activities of its licensed managing employees and its unlicensed employees and representatives.

Section 6. [5.] (1) The licensed rental vehicle agent shall:

(a) Adopt and utilize the office's [department's] preapproved licensing examination for its managing employees; or

(b) Submit its proposed licensing examination to be given to its managing employees to the executive director [commissioner] for approval.

(2) The examination for the managing employees shall include at least twenty-five (25) questions on the topics in the office's [department's] course outline. The managing employee applicant shall attain a score of seventy (70) percent or better to pass the examination and be eligible for the license.

Section 7. [6.] (1) The licensed rental vehicle agent shall submit its proposed continuing education courses for its licensed managing employees and its unlicensed employees or representatives to the executive director [commissioner] for approval.

(2) The licensed managing employee shall successfully complete at least six (6) hours of continuing education during each continuing education biennium. At least four (4) hours shall be related to property and casualty insurance and at least two (2) hours shall be related to ethics.

(3) The licensed rental vehicle agent's unlicensed employees or representatives shall receive one (1) hour of continuing education relating to consumer disclosures each year.

(4) Only continuing education courses approved in accordance with subsection (1) of this section or 806 KAR 9:220 may be used to satisfy the continuing education requirements of this section. These continuing education courses shall be taught by approved providers and instructors, which may include the licensed rental vehicle agent.

(5) The managing employee license of any individual failing to comply with the continuing education requirements of this section shall be terminated and promptly surrendered to the executive director [commissioner] without demand.

Section 8. [7.] (1) The rental vehicle agent licensee shall certify to the executive director [commissioner] on Form CE/RV-302, as prescribed in 806 KAR 9:340, that each licensed managing employee has successfully completed the continuing education required by Section 6 of this administrative regulation for each [the] continuing education biennium in accordance with KRS 304.9-295 [ending June 30, 2002, and biennially thereafter].

(2) The rental vehicle agent licensee shall certify to the executive director [commissioner] on Form CE/RV-303, as prescribed in 806 KAR 9:340, that its unlicensed employees and representatives have successfully completed the continuing education required by Section 6 of this administrative regulation for each [the] continuing education biennium in accordance with KRS 304.9-295 [ending June 30, 2002, and biennially thereafter].

(3) The rental vehicle agent licensee shall maintain complete records of the prelicensing study and course examination for the managing employees and continuing education for the managing employees and unlicensed employees or representatives for at least three (3) years.

Section 9. [8.] The licensed managing employee shall certify to the executive director [commissioner] on Form CE/RV-302, as prescribed in 806 KAR 9:340, that he or she has successfully completed the continuing education required by Section 6 of this administrative regulation for each [the] continuing education biennium in accordance with KRS 304.9-295 [ending June 30, 2002, and biennially thereafter.

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

(a) Form 8301, "Individual License Application (3/2001 edition)";

(b) Form 8301-BE, "Business Entity License Application (3/2001 edition)";

(c) Form 8301-RV, "Rental Vehicle License – Supplemental Application (3/2001 edition)";

(d) Form CE/RV-302, "Continuing Education Certificate of Completion, Rental Vehicle Managing Employee (3/2001)";

(e) Form CE/RV-303, "Continuing Education Certificate of Completion, Unlicensed Employees and Representatives of Rental Vehicle Agent (3/2001)"; and

(f) Form 8303, "Record Correction Form (5/2001 edition)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance at 215 West Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601 Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 work days prior to the hearing, of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 sets forth the information to be included in the application for rental vehicle agent and managing employee licenses; the requirements for prelicensing education, course examinations, continuing education for rental vehicle managing employees; and recordkeeping for rental vehicle agents and their employees who sell rental vehicle insurance.

(b) The necessity of this administrative regulation: This administrative provides specific prelicensing education, licensing procedures, and continuing education requirements to flesh out the general provisions in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304 2-110 authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing of rental vehicle agents and managing employees by specifying the application forms, fees, recordkeeping, prelicensing education, prelicensing course of study, prelicensing examination, continuing education, certification of continuing education, and incorporating the current versions of the state applications.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. This amendment also changes the continuing education biennium to conform to KRS 304.9-295 and updates the forms.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to provide consistency between the statutes and this regulation and to incorporate the most current versions of forms.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. Additionally, 2005 Ky. Acts ch. 143 amended the continuing biennium cycle. This amendment conforms the continuing education biennium for rental vehicle agents to the new cycle. Finally, the amendment updates the forms.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation and updating the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should benefit rental vehicle agents, managing employees, and their respective employers

(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 makes technical changes and should have no new effect on the group.

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

(a) Initially: There should not be an initial cost to implement this administrative regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. 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 any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation applies in the same manner to all rental vehicle agents and rental vehicle managing employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:310. Viatical settlement broker license.

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.15-700(2)(a) [(3)], 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-700(2)(a) [(3)] requires the executive director [~~commissioner~~] to promulgate administrative regulations to provide for the licensing of viatical settlement brokers and the termination or revocation of the license. KRS 304.15-720 authorizes the executive director [~~commissioner~~] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720 and to establish appropriate requirements and fees for a viatical settlement broker license. This administrative regulation establishes the information to be included in the application for, the requirements for the issuance and continuation of, and the fees for a viatical settlement broker license.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

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

(3) [~~Definition.~~] "Viatical settlement broker" is defined in KRS 304.15-020(4).

Section 2. Individual Applicant. (1) An individual may be issued a viatical settlement broker license if the executive director [~~commissioner~~] determines that the applicant:

(a) Is at least twenty-one (21) years of age;

[~~(b) Has successfully attained a general educational level equivalent to that required for graduation from an accredited high~~

~~school in Kentucky;~~

~~(c)~~] Has completed a forty (40) hour viatical prelicensing classroom course of study, which has been approved by the executive director [~~commissioner~~] in accordance with 806 KAR 9 001, and

(c) [~~(d)~~] Has passed a viatical examination in accordance with 806 KAR 9 070

(2) An individual who holds [~~or has held~~] an agent license with a life line of authority for at least the [~~within~~] twelve (12) months prior to the date of this application for a viatical settlement broker license shall be exempt from the [~~life insurance portion of the~~] course of study required by subsection (1)(b) [~~(1)(c)~~] of this section.

(3) An individual who holds [~~or has held~~] an agent license with a life line of authority for at least the [~~within~~] twelve (12) months prior to the date of this application for a viatical settlement broker license shall be exempt from the life insurance portion of the examination required by subsection (1)(c) [~~(1)(d)~~] of this section.

(4) An individual applying for a viatical settlement broker license shall

(a) Submit completed Form 8301, as prescribed in 806 KAR 9 340 [~~-VS~~];

(b) Submit Form 8301-BGC, as prescribed in 806 KAR 9:340;

(c) Remit the nonrefundable fee of $250;

(d) Submit Form CPL-01, as prescribed in 806 KAR 9:340;

(e) [~~(c)~~] Provide proof of financial responsibility in the amounts established in KRS 304 15-700[5] [~~(4)~~] and in accordance with 806 KAR 9.210, and

(f) [~~(d)~~] Provide the following documentation, as applicable:

1. Documentation supporting the applicant's answers on the application; and

2. If using an assumed name, certified copies of certificates required in accordance with KRS 365 015[~~;~~ ~~and~~

~~(e) Submit confirmation from the Life Division of the Kentucky Department of Insurance that the applicant has met the filing and approval of contracts and forms requirements of KRS 304.15-700(2).~~]

Section 3. Business Entity Applicant. (1) A business entity may be issued a viatical settlement broker license if the executive director [~~commissioner~~] determines the applicant has designated only individuals acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.

(2) A business entity applying for a viatical settlement broker license shall:

(a) Submit completed Form 8301-BE with Form 8305, as prescribed in 806 KAR 9:340 [~~-VS~~],

(b) Remit the nonrefundable fee of $750,

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) [~~(4)~~] and in accordance with 806 KAR 9:210;

(d) Provide the following documentation, as applicable;

1. Articles of incorporation, articles of organization, partnership agreement, or certificate of authority from the Kentucky Secretary of State;

2. Documentation supporting the applicant's answers on the application; and

3. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015; and

(e) Provide a list of all officers, directors, or general partners, as applicable, including their names, titles, addresses, Social Security numbers, and Kentucky Office [~~Department~~] of Insurance identification numbers; [~~and~~

~~(f) Submit confirmation from the Life Division of the Kentucky Department of Insurance that the applicant has met the filing and approval of contracts and forms requirements of KRS 304.15-700(2).~~]

Section 4. Renewal and Continuation of License. (1) Each viatical settlement broker license shall continue in force and renew in accordance with KRS 304.9-260. The renewal fee shall be nonrefundable and in the amount as follows:

(a) $250 for an individual licensee; or

(b) $750 for a business entity licensee.

(2) [~~Except for the changes requiring prior notification under KRS 304.15-700(2),~~] The licensed viatical settlement broker shall notify the Office [~~Department~~] of Insurance in writing within thirty (30) days of any change to the information in the application or in the documents required to be submitted in accordance with Section 2 or 3 of this administrative regulation.

Section 5. Continuing Education. (1) An individual licensed as a viatical settlement broker shall complete twenty-four (24) hours of office[~~department~~]-approved continuing education in accordance with KRS 304.9-295 [~~during each continuing education biennium~~].

(2) The required continuing education hours shall include a minimum of:

(a) Six (6) [~~Ten (10)~~] hours in life insurance;

(b) Three (3) [~~Six (6)~~] hours in viaticals, and

(c) Three (3) [~~Two (2)~~] hours in ethics.

(3) The same hours may be credited towards the individual's continuing education requirements for the viatical settlement broker license and the applicable agent license, if any.

~~[Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form 8301-VS, "Viatical Settlement Broker/Provider Individual License Application (7/2002 edition)", and~~

~~(b) Form 8301-BE-VS, "Viatical Settlement Broker/Provider Business Entity License Application (7/2002 edition)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 sets forth the information to be included in the application for viatical settlement broker licenses; the requirements for prelicensing education, application procedures, examination, examination fees, and exemption from examination, continuing education, renewal and continuation of license, and notification requirements for individuals and business entities.

(b) The necessity of this administrative regulation: This administrative regulation provides specific prelicensing education, licensing procedures, renewal procedures, and continuing education requirements to flesh out the general provisions in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate administrative regulations necessary for

or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-700(3) authorizes the executive director to promulgate administrative regulations to provide for licensing for viatical settlement providers and brokers, and to prescribe examinations. KRS 304.15-720 authorizes the executive director to promulgate regulations implementing KRS 304.15-700 to 304.15-720.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will supplement the general statutory provisions for licensing of viatical settlement brokers and providers by specifying the application forms, fees, recordkeeping, prelicensing education, prelicensing course of study, prelicensing examination, continuing education, and to incorporate the current versions of the state applications

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. It deletes the language requiring the applicant to have a high school education to meet the National Association of Insurance Commissioners uniformity standards. It deletes the provision requiring the applicant to submit proof from the Life Division that the applicant has met the filing and approval of forms requirement in KRS 304.15-700(2) to conform to a change in the statute. It deletes the requirement that the licensee give the office 30 days' prior notice of change of address to conform to a change in the statute. This amendment deletes the forms that were incorporated by reference as those forms have been moved to a single form regulation.

(b) The necessity of the amendment to this administrative regulation: To provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. 2005 Ky. Acts ch 58 deleted KRS 304.15-700(2), the provision that required proof of prior approval of forms and prior notice of change in address. This amendment makes conforming changes to the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 13 viatical settlement brokers currently licensed in Kentucky and future applicants for a viatical settlement broker license.

(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 makes technical changes and simplifies the licensing process.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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 established fees when originally enacted. This amendment does not alter the existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all viatical settlement broker applicants.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:320. Viatical settlement provider license.

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725

STATUTORY AUTHORITY: KRS 304.2-110(1), [~~304.15-700(3),~~] 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [~~KRS 304.15-700(3) requires the commissioner to promulgate administrative regulations to provide for the licensing of viatical settlement providers and the termination or revocation of the license.~~] KRS 304.15-720 authorizes the executive director [~~commissioner~~] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720 and to establish appropriate requirements and fees for a viatical settlement provider license. This administrative regulation establishes the information to be included in the application for, the requirements for the issuance and continuation of, and the fees for a viatical settlement provider license.

Section 1. Definitions (1) "Executive director" means the Executive Director of the Office of Insurance

(2) "Office" means the Office of Insurance

(3) [~~Definition.~~] "Viatical settlement provider" is defined in KRS 304.15-020(6).

Section 2. Individual Applicant. (1) An individual may be issued a viatical settlement provider license if the executive director [~~commissioner~~] determines that the applicant [~~:~~

[(a)] Is at least twenty-one (21) years of age; [~~; and~~

~~(b) Has successfully attained a general educational level equivalent to that required for graduation from an accredited high school in Kentucky.~~]

(2) An individual applying for a viatical settlement provider license shall:

(a) Submit completed Form 8301 and 8301-BGC, as prescribed in 806 KAR 9:430 [~~-VS, which is incorporated by reference in 806 KAR 9:310, Section 6~~];

(b) Remit the nonrefundable fee of $500;

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) [~~(4)~~] and in accordance with 806 KAR 9:210;

(d) Provide the following documentation, as applicable:

1. Documentation supporting the applicant's answers on the application; and

2. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015; [~~; and~~

~~(e) Submit confirmation from the Life Division of the Kentucky Department of Insurance that the applicant has met the filing and approval of contracts and forms requirements of KRS 304.15-700(2).~~]

Section 3. Business Entity Applicant. (1) A business entity may be issued a viatical settlement provider license if the executive director [~~commissioner~~] determines the applicant has designated only individuals acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.

(2) A business entity applying for a viatical settlement provider license shall:

(a) Submit completed Form 8301-BE [~~-VS, which is incorporated by reference in 806 KAR 9:310, Section 6~~];

(b) Remit the nonrefundable fee of $1,500,

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) [(4)] and in accordance with 806 KAR 9:210;

(d) Provide the following documentation, as applicable

1. Articles of incorporation, articles of organization; and partnership agreement, or

certificate of authority from the Kentucky Secretary of State;

2. Documentation supporting the applicant's answers on the application,

3. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015,

(e) Provide a list of all officers, directors, or general partners, as applicable, including their names, titles, addresses, Social Security numbers, and Kentucky Office [~~Department~~] of Insurance identification numbers; and

(f) Submit Form 8305, as prescribed in 806 KAR 9:340 [~~confirmation from the Life Division of the Kentucky Department of Insurance that the applicant has met the filing and approval of contracts and forms requirements of KRS 304.15-700(2)~~]

Section 4. Renewal and Continuation of License. (1) Each viatical settlement provider license shall continue in force and renew in accordance with KRS 304.9-260.

(2) The renewal fee shall be nonrefundable and in the amount as follows:

(a) $500 for an individual licensee; or

(b) $1,500 for a business entity licensee.

(3) [~~Except for the changes requiring prior notification under KRS 304.15-700(2),~~] The licensed viatical settlement provider shall notify the Office [~~Department~~] of Insurance in writing within thirty (30) days of change to the information in the application or in the documents required to be submitted in accordance with Section 2 or 3 of this administrative regulation.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 1 p.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, 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 sets forth the information to be included in the application for viatical settlement provider licenses; application procedures, examination, examination fees, renewal and continuation of license, and notification requirements for individuals and business entities.

(b) The necessity of this administrative regulation: This administrative provides specific licensing procedures, renewal procedures, and notice provisions to flesh out the general provisions in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-720 authorizes the executive director to promulgate regulations implementing KRS 304.15-700 to 304 15-720.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing of viatical settlement providers by specifying the application forms, fees, and renewal procedures.

(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 changes "department" to "office" and "commissioner" to "executive director" to conform to 2005 Ky. Acts ch. 123. It deletes the language requiring the applicant to have a high school education to meet the National Association of Insurance Commissioner's uniformity standards. It deletes the provision requiring the applicant to submit proof from the Life Division that the applicant has met the filing and approval of forms requirement in KRS 304.15-700(2) to conform to a change in the statute. It deletes the requirement that the licensee give the office 30 days' prior notice of change of address to conform to a change in the statute.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 123, reorganized the Environmental and Public Protection Cabinet and changed the name "department" to "office" and "commissioner" to "executive director." This amendment imports those changes to the regulation. 2005 Ky. Acts ch. 58 deleted KRS 304.13-700(2), the provision that required proof of prior approval of forms and prior notice of change in address. This amendment makes conforming changes to the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 10 licensed viatical settlement brokers operating in Kentucky and future applicants for a viatical settlement broker license.

(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 makes technical changes and simplifies the licensing process.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(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 will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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 established fees when originally enacted. This amendment does not alter the existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply

since this administrative regulation is applied in the same manner to all viatical settlement provider applicants

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amendment)

806 KAR 12:080. Replacement of life insurance and annuity contracts[; replacement of].

RELATES TO: KRS 304.12-030
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director [Commissioner] of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.12-030 establishes minimum standards of conduct to be observed in replacement or proposed replacement of life insurance policies and annuity contracts. This administrative regulation sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies and annuity contracts.

Section 1. [Purpose. The purpose of this administrative regulation is:

(1) To regulate the activities of insurers and agents with respect to the replacement of existing life insurance; and

(2) To protect the interests of life insurance policy owners by establishing procedures to be employed in the replacement or proposed replacement of existing life insurance.

Section 2.] Definitions. [For the purposes of this administrative regulation, the following terms shall have the meaning herein provided:]

(1) ["Replacement," "existing insurer," "existing life insurance," and "replacing insurer," are defined as in KRS 304.12-030.

(2)] "Conservation" means any attempt by the existing insurer or its agent to continue existing life insurance in force after the existing insurer has received a copy of the "Office Form A, Important Notice: Replacement of Life Insurance or Annuities[Notice Regarding Replacement of Life Insurance]" as required by Section 3[4](2) of this administrative regulation from a replacing insurer. A conservation effort does not include [such] routine administrative procedures [as late payment reminders, late payment offers or reinstatement offers].

(2) "Direct-response solicitation" is defined in KRS 304.12-030(1)(f). (3) "Executive director" means the Executive Director of the Office of Insurance. ["Direct response sales" means any sale of life insurance where the insurer does not utilize an agent in the sale or delivery of the policy].

(4) ["Soliciting material" means written sales aids of all kinds, including policy summaries and comparison statements, which are used by an insurer, agent or broker in comparing existing life insurance to proposed life insurance in order to recommend the replacement or conservation of existing life insurance. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered soliciting material] "Existing life insurance" is defined in KRS 304.12-030(1)(d).

(5) "Existing insurer" is defined in KRS 304.12-030(1)(b).

(6) "Financed purchase" is defined in KRS 304.12-030(1)(e).

(7) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

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

(9) "Policy summary" means:

(a) For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain, to the extent applicable, the following information:

1. The current death benefit;

2. The annual contract premium;

3. The current cash surrender value;

4. The current dividend, and

5. The amount of outstanding loans; or

(b) For universal life policies, a written statement that shall contain, at a minimum, the following information:

1. The beginning and end dates of the current reporting period;

2. The policy value at the end of the previous reporting period and at the end of the current reporting period;

3. The total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type;

4. The current death benefit at the end of the current reporting period on each life covered by the policy;

5. The net cash surrender value of the policy as of the end of the current reporting period; and

6. The amount of outstanding loans, if any, as of the end of the current reporting period.

(10) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(11) "Replacement" is defined in KRS 304.12-030(1)(a).

(12) "Replacing insurer" is defined in KRS 304.12-030(1)(c).

(13) "Sales material" means a sales illustration and any other written, printed, or electronically-presented information created, completed, or provided by the company or agent and used in the presentation to the policy or contract owner related to the policy or contract purchased.

(14) "Universal life insurance policy" means a life insurance policy where separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy. A universal life insurance policy may provide for other credits and charges, such as charges for the cost of benefits provided by the rider.

Section 2. [3.] Exemptions. This administrative regulation shall not be applicable to the policies or contracts [as] set forth in KRS 304.12-030(3) [(4)].

Section 3. [4.] Duties of Agents [where Replacement is Involved]. (1) Each [replacing] agent shall submit to the [replacing] insurer with, or as part of the [each] application, [for life insurance] a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts [or not the proposed life insurance will replace existing life insurance]. If the applicant indicates that he or she does not have existing policies or contracts, the agent's duties with respect to replacement are complete.

(2) If the applicant indicates that he or she has existing policies or contracts [Where replacement is involved], the [replacing] agent shall present and read to the applicant, not later than at the time of taking the application [a] "Office Form A, Important Notice: Replacement of Life Insurance or Annuities," [Notice Regarding Replacement of Life Insurance," Form A,] or a substantially-similar form approved by [with prior approval of] the executive director [commissioner]. No approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall [must] be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud and left with the applicant.

(3) The notice shall list all life insurance policies or annuity contracts proposed to be replaced, and properly identified by:

(a) Name of insurer;

(b) The insured or annuitant; and

(c) Policy or contract number, if available.

(4) The notice shall include a statement as to whether each policy or contract will be replaced or whether a policy or contract will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification shall be listed.

(5) In connection with a replacement transaction, the agent shall leave with the applicant at the time an application for a new policy or contract is completed, the original or a copy of all sales material. Electronically-presented sales material shall be provided

to the policy or contract owner in printed form no later than at the time of policy or contract delivery

(6) Except as provided in Section 5(3), in connection with a replacement transaction, the agent shall submit to the insurer to which an application for a policy or contract is presented,

(a) A copy of each document required by this section,

(b) A statement identifying any preprinted or electronically-presented company approved sales materials used, and

(c) Copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased

~~[Where replacement is involved, the agent shall~~

~~(a) Submit to the replacing insurer, with the application, a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and the applicant, and a copy of all soliciting material used for presentation to the applicant.~~

~~(b) Leave with the applicant the original or a copy of all solicitation material used for presentation to the applicant]~~

Section 4. ~~[5.]~~ Duties of ~~[Replacing]~~ Insurers That Use Agents ~~[except for Direct Response Insurers]~~. (1) Maintain a system of supervision and control to ensure compliance with the requirements of this administrative regulation that shall include at least the following ~~[Each replacing insurer except direct response insurers shall]~~:

(a) ~~[(1)]~~ Inform its agents ~~[field representatives]~~ of the requirements of this administrative regulation and KRS 304.12-030, and incorporate the requirements of this administrative regulation into all relevant agent training manuals prepared by the insurer;

(b) Provide to each agent a written statement of the insurer's position with respect to the acceptability of replacements providing guidance to its agents as to the appropriateness of these transactions;

(c) A system to review the appropriateness of each replacement transaction that the agent does not indicate is in accord with paragraph (b) of this subsection;

(d) Procedures to confirm that the requirements of this administrative regulation have been met; and

(e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or agent.

(2) Have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make the records available to the Office of Insurance. The capacity to monitor shall include the ability to produce records for each agent's:

(a) Life replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;

(b) Number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance.

(c) Annuity contract replacements as a percentage of the agent's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by subsection (1)(e) of this section; and

(e) Replacements, indexed by replacing agent and existing insurer,

(3) Require with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in "Office Form A, Important Notice: Replacement of Life Insurance or Annuities;"

(5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Section 3(5), the basic illustration, and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by Section 3(5) meet the requirements of this administrative regulation and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of this administrative regulation, notify the agent and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Section 5. Duties of Replacing Insurers that Use Agents. (1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) Verify that the required forms are received and are in compliance with this administrative regulation;

(b) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement of when the replacement is identified, if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

(c) Be able to produce copies of the notification regarding replacement required in Section 3(2), indexed by agent, for at least five (5) years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

(d) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract.

(2) Allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to the requirements made of an insurer pursuant to Section 3(5), the insurer may:

(a) Require with each application a statement signed by the agent that:

1. Represents that the agent used only company-approved sales material; and

2. States that copies of all sales material were left with the applicant in accordance with Section 3(4); and

(b) Within ten (10) days of the issuance of the policy or contract:

1. Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with Section 3(4);

2. Provide the applicant with a toll-free number to contact insurer personnel involved in the compliance function if this is not the case; and

3. Stress the importance of retaining copies of the sales material for future reference; and

(c) Be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract. ~~[(2) Require with or as part of each completed application for life insurance a statement signed by the applicant as to whether or not the proposed life insurance will replace existing life insurance; and~~

~~(3) Where replacement is involved require from the agent with the application for life insurance a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and the applicant, and a copy of all soliciting material shown or delivered to the applicant.~~

~~(4) Where replacement is involved:~~

~~(a) Verify the substantial accuracy of information concerning the proposed policy furnished to the applicant in the soliciting material.~~

~~(b) Send the existing insurer notice of the proposed replacement within five (5) working days of the date the application is received at its home or regional office.~~

~~(c) Provide the existing insurer, upon request, copies of all soliciting materials used within twenty (20) days of receipt of said request.~~

~~(d) Delay the issuance of its policy for thirty (30) days after the notice of the proposed replacement required by paragraph (b) of this subsection is delivered to the existing insurer.~~

~~(e) Maintain copies of the "Notice Regarding Replacement of Life Insurance," and all soliciting material used, and a replacement register, cross indexed, by replacing agent and existing insurer, for at least three (3) years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.]~~

Section 6. Duties of the Existing Insurer. Where a replacement is involved in the transaction, the existing insurer shall

(1) Retain and be able to produce all replacement notifications received, indexed by a replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including:

(a) An in-force illustration, if available; or

(b) A policy summary if an in-force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.

(3) Upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer shall send the notice at the time of the first loan.

Section 7. Duties of Insurer with Respect to Direct-response Solicitation ~~[Sales]~~. ~~[Each insurer shall:]~~ (1) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended, or if the applicant fails to respond to the statement, the insurer shall send to the applicant with the policy or contract, a notice regarding replacement in "Office Form B, Notice Regarding Replacing Your Life Insurance Policy or Annuity" or other substantially-similar form approved by the executive director.

(2) If the insurer has proposed the replacement, or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) Provide to applicants or prospective applicants with the policy or contract a notice, as described in "Office Form C, Important Notice: Replacement of Life Insurance or Annuities," or other substantially-similar form approved by the executive director. In these instances, the insurer may delete the references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the executive director. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) Comply with the requirements of Section 5(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of Section 5(1)(c), (d), and 5(2). ~~[Inform its responsible personnel of the requirements of this administrative regulation.~~

~~(2) Require with or as part of each completed application for life insurance a statement signed by the applicant as to whether or not the proposed life insurance will replace existing life insurance.~~

~~(3) Request from the applicant, where replacement exists, with or as part of the application, a list of all existing life insurance that is being replaced identified by name of insurer and amount of coverage.~~

~~(4) Where replacement exists, provide at the time the policy is mailed to the applicant, a "Notice Regarding Replacement of Life Insurance," Form A, or a substantially similar form with prior approval of the commissioner.~~

~~(5) Where replacement exists, provide the existing insurer, upon request, copies of all soliciting materials used within twenty (20) days of receipt of said request.~~

~~Section 7. Duties of Existing Insurer and Its Agents. (1) Each existing insurer shall inform its responsible personnel of the requirements of this administrative regulation and KRS 304.12-030.~~

~~(2) Each existing insurer, or such insurer's agent, that undertakes a conservation effort shall:~~

~~(a) Request copies of all soliciting materials used by the replacing insurer or agent if such information is desired.~~

~~(b) Maintain a file containing all soliciting material used by it to conserve business. This file shall be retained for at least three (3) years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.~~

~~(3) When conserving existing life insurance each agent who uses soliciting material shall leave with the applicant the original or a copy of all soliciting material used in the conservation effort.]~~

Section 8. Violations and Penalties. (1) Any failure to comply with this administrative regulation shall be considered a violation of KRS 304.12-010.

(2) Policy and contract owner have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention. Patterns of this action by policy or contract owners of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the agent's intent to violate this administrative regulation.

(3) Where it is determined that the requirements of this administrative regulation have not been met, the replacing insurer shall provide to the policy owner an in-force illustration, if available, or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in "Office Form C, Important Notice: Replacement of Life Insurance or Annuities."

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

(a) "Office Form A, Important Notice: Replacement of Life Insurance or Annuities;"

(b) "Office Form b, Notice Regarding Replacing Your Life Insurance Policy Or Annuity;" and

(c) "Office Form C, Important Notice: Replacement of Life Insurance or Annuities."

(2) This material may be inspected, copied, or obtained 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 Office of Insurance Internet Web site at http://doi.ppr.ky.gov. ~~[Departmental Form A, entitled "Notice Regarding Replacement of Life Insurance," is filed herein by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.]~~

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner

R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, 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 sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies and annuity contracts.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of 2005 Ky. Acts ch. 47, which removed the exemption of annuities and variable products from the replacement requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts. This will make Kentucky's compliance standards related to replacement the same as other states.

(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 updating the types of policies and contracts subject to the replacement process. Additionally, it updates the process that must be followed when an applicant is replacing existing policies or contracts, including the notices that must be provided to the applicant and the records that must be maintained by the insurer.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the provisions of 2005 Ky. Acts ch. 47, which removed the exemption of annuities and variable products from the requirements for replacing insurance policies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will clarify how annuities and variable products are to be handled in replacement situations and amend Kentucky's existing regulation to adopt the NAIC model regulation for replacement of life insurance products and annuity contracts. This will make Kentucky's compliance standards related to replacement the same as other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect the approximately 520 insurers that are licensed to offer life insurance and annuities in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance and annuities in Kentucky.

(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 insurance agents and insurance companies that sell life insurance and annuities will be required to comply with the new disclosure requirements set forth in the amendments to this administrative regulation. These standards are uniform standards that have been adopted by 45 states.

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

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional 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 will be used for 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all insurance companies and insurance agents offering life insurance and annuities in Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amendment)

806 KAR 15:050. Reporting and general requirements for viatical settlement providers and brokers.

RELATES TO: KRS 304.12-020, 304.15-020, 304.15-035, 304.15-700-304.15-725, 304.99-020

STATUTORY AUTHORITY: KRS 304.15-715, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY. KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the executive director. KRS 304.15-720 authorizes the executive director [~~commissioner~~] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720. This administrative regulation establishes the standards for viatical settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to viatical settlement contracts, viatical settlement providers, and viatical settlement brokers.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

(2) "Individual identification data" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Se-

curity number, or other information that is likely to lead to the identification of the insured.

(3) [(2)] "Insured" means the person covered under the policy being considered for viatication

(4) [(3)] "Insurer" means the entity or insurance company issuing the life insurance policy of the insured.

(5) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate expenential data

(6) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

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

Section 2. Viatical Settlement Contract and Form Approval. (1) A viatical settlement contract submitted to the executive director [~~commissioner~~] for approval shall:

(a) Provide space for identifying the parties;

(b) Provide space for including the amount of the proceeds payable to the viator; and

(c) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.

(2) Each viatical settlement contract or other form submitted for approval shall:

(a) Be accompanied by the filing fee prescribed by KRS 304.4-010;

(b) Have a form number in the lower left corner;

(c) Meet the readability standards established by KRS 304.14-440, and

(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type

(3) The executive director [~~commissioner~~] may review any previously approved viatical settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

(4) An order of the executive director [~~commissioner~~] disapproving a viatical settlement contract or other form shall state the grounds for disapproval.

(5) An order of the executive director [~~commissioner~~] withdrawing approval of a form, other than a viatical settlement contract, shall state the grounds for withdrawal. The withdrawal of a previously approved form, other than a viatical settlement contract, shall be effective at the expiration of a period at least thirty (30) days after the order is entered as the executive director [~~commissioner~~] shall prescribe in the order.

Section 3. General Rules. (1) A viatical settlement provider shall not unfairly discriminate in making viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, or marital or family status.

(2) A viatical settlement provider shall not unfairly discriminate between a viator with a dependent and a viator with no dependent.

(3) A viatical settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

~~(4) [The viator shall have the right to rescind a viatical settlement contract in accordance with KRS 304.15-710 (5) and 304.15-715 (3) subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider that was paid to or on behalf of the viator.~~

~~(5) Pursuant to KRS 304.15-710(7), the viatical settlement funds shall be available to the viator within two (2) business days after the viatical settlement provider has received the insurer's or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the appropriate beneficiary has been designated.~~

~~(6) The viatical settlement provider shall disclose to the viator in writing the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose to the viator in writing the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in these benefits.~~

~~(7) If the viator has chosen to be notified of a change of ownership in accordance with KRS 304.15-715(7)(a), the viatical settlement provider shall communicate the change of ownership or beneficiary to the viator in writing within twenty (20) days after the change.~~

~~(8)~~] Within three (3) days of execution of the viatical settlement contract, the viatical settlement provider shall mail to the viator copies of the following:

(a) The executed viatical settlement contract,

(b) The application for the viatical settlement contract; and

(c) The statement from the licensed attending physician that the viator is of sound mind and not under undue influence or constraint.

(5) Payment of the proceeds of a viatical settlement pursuant to KRS 304 15-710 (1)(g) shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

(6) Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum, except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator

(7) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.

(8) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the insurance policy, the viatical settlement contract shall contain the following provisions:

(a) A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

(b) A provision that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer, either:

1. Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

2. Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

(c) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

(9) In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 4. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. (1) In order to ensure that viators receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill:

(a) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of the face value of the policy, less outstanding loans;

(b) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the face value of the policy, less outstanding loans;

(c) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the face value of the policy, less outstanding loans;

(d) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the face value of the policy, less outstanding loans; and

(e) If an insured's life expectancy is twenty-five (25) months or more, an amount greater than the cash surrender value or accelerated death benefit in the policy

Section 5. [4.] Prohibited Practices. (1) Except for a subpoena issued by the executive director [~~commissioner~~], if a viatical settlement provider or broker is served with a subpoena compelling the viatical settlement provider or broker to produce records containing individual identification data, the viatical settlement provider or broker shall notify the viator and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the viator and the insured.

(2) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

Section 6. Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:

(a) A current authorization, consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request; and

(b) In the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of Form VOC, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

(2) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

(3) The life insurance company may send an acknowledgement of receipt of the request for verification of coverage to the policy owner or certificate holder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the viator or insured to sign any request for change in a policy of a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment, or irrevocable beneficiary rights under the policy. In that situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate. ~~[licensed viatical settlement provider or licensed viatical settlement broker shall not perform any service for the viator or insured other than those services necessary to effectuate a viatical settlement.]~~

Section 7. [5.] Disclosure. (1) The viatical settlement broker shall provide a copy of the viatical settlement disclosure Form VS 007 and the "Kentucky Consumer Guide to Understanding Viaticals" to the viator on or before the date that the viatical settlement broker offers or advertises the availability of the viator's life insurance policy, introduces the viator to a viatical settlement provider, or offers or attempts to negotiate a viatical settlement between a viator and a viatical settlement provider. The viatical settlement broker shall deliver the original, executed Form VS 007 to the viatical settlement provider that purchases the life insurance policy on or before the date that the viatical settlement contract is signed by each party to the contract.

(2) If there is no viatical settlement broker involved in the viatical settlement transaction, the viatical settlement provider shall provide the viatical settlement disclosure Form VS 007 and the "Kentucky Consumer Guide to Understanding Viaticals" to the viator on or before the date that the viatical settlement contract is signed by each party to the contract.

(3) The disclosure form required by subsections (1) and (2) of this section shall be signed and dated by the viator, by an authorized representative of the viatical settlement provider, and by the viatical settlement broker, if any

Section 8. [6.] Advertising for Viatical Settlements. (1) This section shall apply to advertising of viatical settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A viatical settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. Advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee and the individual who created or presented the advertisement. A system of control shall include routine notification, at least once a year, to persons authorized by the viatical settlement licensee to disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(3) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the executive director [~~commissioner~~] from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(4) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(5) The following rules shall govern the advertisement of viatical settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. Making the viatical settlement contract available for inspection prior to consummation of the sale, or offering to refund the payment if the viator is not satisfied, or including in the viatical settlement contract a "free look" period that satisfies or exceeds legal requirements, shall not remedy misleading statements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:

1. Be genuine;

2. Represent the current opinion of the author;

3. Be applicable to the viatical settlement contract product or service advertised; [~~and~~]

4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis or endorsement,

5 Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and

6. Not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section

(g) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period not less than five (5) years after its use

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the viatical settlement licensee shall be identified in all advertisements about the licensee or its viatical settlement contracts, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device, or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other charactenstics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Office [department] of Insurance to find out if Kentucky requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

(n) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee

(p) An advertisement shall not create the impression that a division or agency of the state or of the U. S. government endorses, approves or favors:

1. A viatical settlement licensee or its business practices or methods of operation;

2. The merits, desirability, or advisability of a viatical settlement contract;

3 A viatical settlement contract; or

4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the viatication will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator

(r) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months

Section 9. [7.] Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed viatical settlement provider shall submit the following related to the licensee's activities for the previous calendar year:

(a) A report of the viatical settlement transactions related to Kentucky insureds, which shall be submitted on Form VS 001;

(b) A report of the individual mortality of Kentucky insureds, which shall be submitted on Form VS 002;

(c) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VS 003; and

(d) A certification of the information contained in the reports, which shall be submitted on Form VS 006 and shall be filed with the reports

(2) On or before March 1 of each calendar year, the licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:

(a) A report of the viatical settlement transactions related to Kentucky insureds, which shall be submitted on Form VS 004;

(b) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VS 005; and

(c) A certification of the information contained in the reports, which shall be submitted on Form VS 006 and shall be filed with the reports.

Section 10. [8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Consumer Guide to Understanding Viaticals" (5/2005 [7/2000] edition);

(b) Form VS 001, "Viatical Settlement Provider Report - Kentucky Insureds Only" (4/2001 edition);

(c) Form VS 002, "Individual Mortality Report - Kentucky Insureds Only" (4/2001 edition);

(d) Form VS 003, "Viatical Settlement Provider Report - All States and Territories" (4/2001 edition);

(e) Form VS 004, "Viatical Settlement Broker Report - Kentucky Insureds Only" (4/2001 edition);

(f) Form VS 005, "Viatical Settlement Broker Report - All States and Territories" (4/2001 edition);

(g) Form VS 006, "Viatical Settlement Provider/Broker Certification Form" (6/2005 [4/2001] edition); and

(h) Form VS 007, "The Kentucky Viatical Settlement Disclosure Form - Notice Regarding Viatical Settlement Contracts" (6/2005 [4/2001] edition); and

(i) Form VOC, "Verification of Coverage for Life Insurance Policies Form (4/2005 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department] of Insurance, 215 West Main Street, Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the Office of Insurance Internet Web site at http://doi.ppr.ky.gov.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 9 a.m. ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 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: DJ Wasson, Kentucky Office of Insurance
P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(a) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards for viatical settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to viatical settlement contracts, viatical settlement providers and viatical settlement brokers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide additional clarification of the viatical settlement statutes and to prescribe the processes for doing business as a viatical settlement broker and a viatical settlement provider.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement the viatical settlement statutes. KRS 304.15-715, as amended by 2005 Ky. Acts ch. 58, authorizes the executive director to establish a form for viatical settlement providers to use to request verification of coverage. This regulation aids in the implementation of the viatical settlement statutes and prescribes the required form to request verification of coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the process for approval of forms for use in viatical settlement transactions, clarifies prohibited practices in viatical settlement transactions, establishes minimum amounts to be paid to a chronically- or terminally-ill viator, prescribes required disclosures, sets standards for advertising viatical services, and establishes a reporting mechanism to allow the Office of Insurance to appropriately monitor the industry.

(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 to this existing administrative regulation remove provisions that have now been enacted in the statutes (through enactment of 2005 Ky. Acts ch. 58), prescribes required provisions that must be included in viatical settlement contracts that allow the viator to retain an interest in the insurance policy, establishes minimum amounts to be paid to a chronically- or terminally-ill viator, and outlines the documents that must accompany a request for verification of coverage and prescribes the process for responding.

(b) The necessity of the amendment to this administrative regulation: The amendments to this existing administrative regulation are necessary to implement 2005 Ky. Acts ch. 58 and to adopt the provisions of the NAIC model regulation related to viatical settlements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement the viatical settlement statutes. KRS 304.15-715, as amended by 2005 Ky. Acts ch. 58, authorizes the executive director to establish a form for viatical settlement providers to use to request verification of coverage. This regulation aids in the implementation of the viatical settlement statutes and prescribes the required form to request verification of coverage.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this existing regulation will ensure the protection of terminally- or chronically-ill viators by setting minimum amounts that must be paid upon viaticating a life insurance policy, and will establish the process for requesting and responding to requests for verification of coverage, as required by KRS 304.15-715.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 524 life insurance companies, 10 viatical settlement providers, and 17 viatical settlement brokers currently licensed to do business in Kentucky. This administrative regulation will also impact any Kentucky resident seeking to viaticate his or her life insurance policy.

(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: With regard to the insurance industry and the viatical settlement industry, this administrative regulation will establish processes that must be adhered to when negotiating or executing viatical settlement contracts in Kentucky. With regard to Kentucky residents, this administrative regulation will provide necessary consumer protections related to advertising, disclosures and minimum payouts.

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

(a) Initially: There will not be a significant initial cost to implement this administrative regulation.

(b) On a continuing basis. There will not be a significant cost related to this administrative regulation on an on-going basis.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because the Office of Insurance will implement and enforce this regulation in the same manner for all viatical settlement brokers, viatical settlement providers, and life insurers.

CABINET FOR ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:390. Benefits and disclosures in Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500-304.14-550, 304.17-311, 304.18-034, 304.32-275, 304.38-205, 42 U.S.C. 1395-1395ggg, 42 U.S.C. 1395-w-101-1395w-152

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for benefits and disclosures in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Activities of daily living" means activities such as bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(2) "Applicant" is defined in KRS 304.14-500(1).

(3) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

(4) "Care provider" means a duly-qualified or licensed home health aide/homemaker, personal care aid, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(5) "Certificate" is defined in KRS 304.14-500(2).

(6) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(7) [~~"Commissioner" is defined in KRS 304.1-050(1).~~

~~(8)~~] "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(8) [~~(9)~~] "Emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) "Executive director" means the Executive Director of the Office of Insurance.

(10) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(11) "Home" means any place used by the insured as a place of residence, other than a hospital or skilled nursing facility, if the place qualifies as a residence for home health care services covered by Medicare.

(12) "Insurance policy" means an insurance policy; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; and an enrollee contract issued by a health maintenance organization.

(13) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(14) "Medicare" is defined in KRS 304.14-500(4).

(15) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(16) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(17) "Medicare supplement policy" is defined in KRS 304.14-500(3).

(18) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

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

(20) Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(21) [~~(20)~~] "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(22) [~~(21)~~] "Secretary" means the Secretary of the United States Department of Health and Human Services.

(23) [~~(22)~~] "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

(24) [~~(23)~~] "Structure, language, and format" means style, arrangement, and overall content of a benefit.

Section 2. Purpose, Applicability, and Scope. (1) The purpose of this administrative regulation is to provide for the reasonable standardization of coverage and to simplify terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of the policies, to eliminate provisions contained in these policies which may be misleading or confusing in connection with the purchase of the policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverage to persons eligible for Medicare.

(2) This administrative regulation shall apply to.

(a) A Medicare supplement policy delivered or issued for delivery in this state on or after the effective date of this administrative regulation; and

(b) A certificate issued under a group Medicare supplement policy, which a certificate has been delivered or issued for delivery in this state.

(3) This administrative regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof; for employees or former employees, or a combination thereof, or for members or former members of labor organizations, or a combination thereof.

Section 3. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains terms or definitions which conform to those in this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force".

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless the definition is prohibited by law.

(2) "Benefit period", or "Medicare benefit period", shall not be defined more restrictively than as defined in the Medicare Program.

(3) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare Program.

(4) "Health care expenses" shall be defined as expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

[~~(a) These expenses shall not include:~~

~~1. Home office and overhead costs;~~

~~2. Advertising costs;~~

~~3. Commissions and other costs of acquiring insurance business;~~

~~4. Taxes;~~

~~5. Capital costs;~~

~~6. Administrative costs; and~~

~~7. Claims processing costs.~~]

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint

Commission on Accreditation of Healthcare Organizations [~~Hospitals~~], but shall not be defined more restrictively than as defined in the Medicare Program.

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, Part I of Pub.L. 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(7) "Medicare-eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare Program.

(9) "Sickness" shall not be defined more restrictively than the following: "sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 4. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(2)(a) and 6(1)(a) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy shall not contain a probationary or elimination period.

(3) A Medicare supplement policy or certificate shall not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) A Medicare supplement insurance policy in force in this state shall not contain benefits that duplicate benefits provided by Medicare.

(5) Subject to Sections 5(2)(d), (e), and (g) and 6(1)(d), and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(6) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(7) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 5. Minimum Benefit Standards. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and shall not preclude the inclusion of other provisions or benefits that are consistent with these standards. This section applies to a Medicare supplement policy issued prior to January 1, 1992.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e)1. Except as authorized by the executive director [~~commissioner~~], an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this administrative regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by 42 U.S.C. 1395w-101-1395w-152, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

(3) Minimum benefit standards.

(a) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare-eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409 87(a)(2), unless replaced in accordance with 42 C.F.R. 409 87(c)(2) or already paid for under Part B, and

(f) Coverage for the coinsurance amount, or if hospital outpatient department services are paid under a prospective payment system, the copayment amount, of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F R. 409 87(a)(2), unless replaced in accordance with 42 C.F.R. 409 87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this administrative regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable, and:

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by 42 U S C 1395w-101-1395w-152, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under 42 U.S.C. 1396 to 1396v, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to the assistance.

2. If the suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of the entitlement to medical assistance) if the policyholder or certificate holder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under 42 U.S.C. 426(b) and is covered under a group health plan as defined in 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

4. Reinstitution of coverages as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for resumption of coverage that [which] is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially-equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for basic ("core") benefits common to [all] benefit plans A through J. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package. These Medicare supplement insurance benefit plans shall not substitute for the basic "core" package.

(a) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare-eligible expenses incurred for hospitalization to the extent not covered by Medicare for each

Medicare lifetime inpatient reserve day used,

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate [diagnostic-related group (DRG) day outlier per diem], pursuant to 42 C F.R. 412 82, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409 87(c)(2); and

(e) Coverage for the coinsurance amount or in the case of hospital outpatient department services paid under a prospective system, the copayment amount, of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this administrative regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement,

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(h) Medically-necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically-necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000;

(i) Preventive medical care benefit:

1. Coverage for the following preventive health services not covered by Medicare:

a. [1.] An annual clinical preventive medical history and physical examination that may include tests and services from clause b of this subparagraph [subparagraph 2 of this paragraph] and patient education to address preventive health care measures; and [.]

b. Preventative [2. Any one (1) or a combination of the following preventive] screening tests or preventive services, the selection and frequency of which is determined to be [considered] medically appropriate by the attending physician; and [:

a. Digital rectal examination,

b. Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;

c. Pure tone (air only) hearing screening test, administered or ordered by a physician;

d. Serum cholesterol screening (every five (5) years);

e. Thyroid function test, or

f. Diabetes screening.

3. Tetanus and diphtheria booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician.]

2. Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in procedure codes, established by the secretary pursuant to 42 U.S C. 1395w-4(c)(5), to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare; and

(j) At-home recovery benefit. coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. Coverage requirements and limitations.

a. At-home recovery services provided shall be primarily services which assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) $1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

2. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(4) Standards for benefit plans K and L are established in Section 7(6) of this administrative regulation [; and (k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer polices or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.]

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 7(7) [6(2)(k)] and 8 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans [Plans] "A" through "L" ["J"] listed in this section [subsection] and conform to the definitions in Section 1 of 806 KAR 17:400 and [(7), (10), (15),

~~(16), (18), (20), and (22) of~~] this administrative regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2), (3), and (4) of this administrative regulation and list the benefits in the order shown in this section [~~subsection~~]

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; and the Medicare Part A deductible, as defined in Section 6(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible, skilled nursing facility care; Medicare Part B deductible; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), and (h) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; medically-necessary emergency care in a foreign country; and preventive medical care, as defined in Section 6(3)(a), (b), (h), and (i) of this administrative regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; the skilled nursing facility care; the Part B deductible; 100% of the Medicare Part B excess charges; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), (e), and (h) of this administrative regulation, respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits as defined in Section 6(2) of this administrative regulation in addition to the following:

1. Medicare Part A deductible;
2. Skilled nursing facility care;
3. The Medicare Part B deductible;
4. 100% of the Medicare Part B excess charges; and
5. Medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (c), (e), and (h) of this administrative regulation, respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; eighty (80) percent of the Medicare Part B excess charges; medically-necessary emergency care in a foreign country; and the at-home recovery benefit, as defined in Section 6(3)(a), (b), (d), (h), and (j) of this administrative regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; basic prescription drug benefit; and medically-necessary emergency care in a foreign country, as defined in Section 6(3)(a), (b), (f), and (h) of this administrative regulation, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare Part A deductible; skilled nursing facility care; 100% of the Medicare Part B excess charges; basic prescription drug benefit, medically-necessary emergency care in a foreign country; and at-home recovery benefit, as defined in Section 6(3)(a), (b), (e), (f), (h), and (j) of this administrative regulation, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefits as defined in Section 6(2) of this administrative regulation; the Medicare part A deductible, skilled nursing facility care; Medicare Part B deductible; 100% of the Medicare Part B excess charges; extended prescription drug benefit; medically-necessary emergency care in a foreign country; preventive medical care; and at-home recovery benefit, as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this administrative regulation, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall not include an outpatient prescription drug benefit after December 31, 2005. The plan shall consist of 100% of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the core benefits as defined in Section 6(2) of this administrative regulation in addition to the following:

1. The Medicare Part A deductible;
2. Skilled nursing facility care;
3. Medicare Part B deductible;
4. Medicare Part B excess charges;
5. Extended outpatient prescription drug benefit;
6. Medically-necessary emergency care in a foreign country;
7. Preventive medical care benefit; and
8. At-home recovery benefit, as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i) and (j) of this administrative regulation, respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Medicare supplement Plan "J" policy, and shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(6) The make-up of two (2) Medicare supplement plans mandated by 42 U.S.C. 1395w-101-1395w-152, shall be:

(a) Standardized Medicare supplement benefit plan K shall consist of the following:

1. Coverage of 100% of Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit or an additional 365 days. The provider shall accept the issuer's payment as payment in full and shall not bill the insured for any balance;

4. Coverage for fifty (50) percent of the Medicare Part A inpa-

tient hospital deductible amount per benefit period until the out-of-pocket limitation met as described in subparagraph 10 of this paragraph;

5. Skilled nursing facility care coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation met as described in subparagraph 10 of this paragraph;

6. Hospice care coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Except for coverage provided in subparagraph (1) of this paragraph, coverage for fifty (50) percent of cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary; and

(b) Standardized Medicare supplement benefit plan L shall consist of the following:

1. Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150 day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit or an additional 365 days. The provider shall accept the issuer's payment as payment in full and shall not bill the insured for any balance;

4. Coverage for seventy-five (75) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled nursing facility care coverage for seventy-five (75) percent of the coinsurance amount for each day used from the twenty-one (21) day through the 100 day in a Medicare benefit period for post hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice care coverage for seventy-five (75) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Coverage for seventy-five (75) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Except for coverage provided in subparagraph (1) of this paragraph, coverage for seventy-five (75) percent of cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $2,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary.

(7) An issuer may, with the prior approval of the executive director, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 8. Medicare Select Policies and Certificates. (1) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The executive director (~~commissioner~~) may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and 42 U.S.C. 1395ss, if the executive director (~~commissioner~~) finds that the issuer has satisfied all of the requirements of this administrative regulation.

(3) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the executive director (~~commissioner~~).

(4) A Medicare Select issuer shall file a proposed plan of operation with the executive director (~~commissioner~~). The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention, and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with subsection (9) of this section.

(g) Any other information requested by the executive director [~~commissioner~~].

(5)(a) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the executive director [~~commissioner~~] prior to implementing any changes. Any changes shall be considered approved by the executive director [~~commissioner~~] thirty (30) days after filing unless specifically disapproved by the executive director [~~commissioner~~].

(b) An updated list of network providers shall be filed with the executive director [~~commissioner~~] at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain these services through a network provider.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare Select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles if providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred if using out-of-network providers do not count toward the out-of-pocket annual limit contained in Medicare plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) When the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall not report any later than each March 31st to the executive director [~~commissioner~~] regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

(11) When the insured makes the initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(12) (a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following not included in the Medicare Select policy or certificate being replaced.

1. The Medicare Part A deductible;

2. [~~Coverage for prescription drugs;~~

~~3.~~] Coverage for at-home recovery services; or

3. [~~4.~~] Coverage for Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following not included in the Medicare Select policy or certificate being replaced:

1. The Medicare Part A deductible;

2. [~~Coverage for prescription drugs;~~

~~3.~~] Coverage for at-home recovery services; or

3. [~~4.~~] Coverage for Part B excess charges.

(14) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 9. Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision:

1. The language or specifications of a renewal or continuation provision shall be consistent with the type of insurance policy issued; and

2. The provision shall:

a. Be appropriately captioned;

b. Appear on the first page of the policy; and

c. Include any:

(i) Reservation by the issuer of the right to change premiums; and

(ii) Automatic renewal premium increases on the insured's age.

(b) A rider or endorsement added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured except for a rider or endorsement:

1. By which an insurer effectuates a written request by an insured;

2. By which an insurer exercises a specifically-reserved right under a Medicare supplement policy; or

3 By which an insurer is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.

(c) After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:

1. The benefits are required by the minimum standards for Medicare supplement policies; or

2. The increased benefits or coverage is required by law.

(d) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(e) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import.

(f) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations".

(g) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(h)1. Issuers of insurance policies and certificates covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to these applicants a "Guide to Health Insurance for People with Medicare" in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services [~~Health Care Financing Administration~~] and in a type size no smaller than twelve (12) point type;

2. Delivery of the guide shall be made whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this administrative regulation; and

3. Delivery of the guide shall be made to the applicant at the time of application and acknowledgment of receipt of the guide shall be obtained by the issuer, except that direct response issuers shall deliver the guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The notice shall:

1. Include a description of revisions to the Medicare Program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate; and

2. Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(d) Notices issued shall comply with the requirements of this subsection and any additional notice requirements pursuant to 42 U.S.C. 1395w-101-1395w-152.

(3) Outline of coverage requirements for Medicare supplement policies

(a) Issuers shall provide an outline of coverage to all applicants when application is presented to the prospective applicant and, except for direct response issuers, shall obtain an acknowledgment of receipt of the outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in HIPMC-MS-21 (07/05) and [~~below~~] in no less than twelve (12) point type. All Plans A through L [~~J~~] shall be shown on the cover page, and any plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

[~~(d) The following items shall be included in the outline of coverage in the order prescribed below:~~

~~(COMPANY NAME)~~

~~Outline of Medicare Supplement Coverage—Cover Page.~~

~~Benefit Plan(s) ___ (Insert letter(s) of plan(s) being offered)~~

~~Medicare supplement insurance shall be sold only in ten (10) standard plans and two (2) high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.~~

~~BASIC BENEFITS: Included in all plans.~~

~~Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.~~

~~Medical expenses: Part B coinsurance (twenty (20) percent of Medicare approved expenses), or, in the case of hospital outpatient department services under a prospective payment system, applicable copayments.~~

~~Blood: First three (3) pints of blood each year.~~

~~A Basic Benefits~~	~~B Basic Benefits~~	~~C Basic Benefits~~	~~D Basic Benefits~~	~~E Basic Benefits~~	~~F* Basic Benefits~~	~~G Basic Benefits~~	~~H Basic Benefits~~	~~I Basic Benefits~~	~~J* Basic Benefits~~
		~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~	~~Skilled Nursing Coinsurance~~
	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~	~~Part A Deductible~~
		~~Part B Deductible~~			~~Part B Deductible~~				~~Part B Deductible~~
					~~Part B Excess (100%)~~	~~Part B Excess (80%)~~		~~Part B Excess (100%)~~	~~Part B Excess (100%)~~
		~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~	~~Foreign Travel Emergency~~
			~~At-home Recovery~~			~~At-home Recovery~~		~~At-home Recovery~~	~~At-home Recovery~~

							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year $1530 deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are $1530. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

1. PREMIUM INFORMATION (Boldface Type)

We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change)

2. DISCLOSURES (Boldface Type)

Use this outline to compare benefits and premiums among policies.

3. READ YOUR POLICY VERY CAREFULLY (Boldface Type)

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

4. RIGHT TO RETURN POLICY (Boldface Type)

If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

5. POLICY REPLACEMENT (Boldface Type)

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

6. NOTICE (Boldface Type)

This policy may not fully cover all of your medical costs.

a. (for agents)

Neither (insert insurer's name) nor its agents are connected with Medicare.

b. (for direct response insurers.)

(insert insurer's name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "Medicare & You" for more details.

7. COMPLETE ANSWERS ARE VERY IMPORTANT (Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this administrative regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this administrative regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.)

PLAN A MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD			
*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$0	$792 (Part A deductible)
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
Additional 365 days	$0	100% of Medicare eligible expenses	$0
Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	$0	Up to $99 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0

Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out patient drugs and inpatient respite care	$0	Balance

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
-Additional 365 days	$0	100% of Medicare eligible expenses	$0
-Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amount	$0	$0
21st thru 100th day	All but $99 a day	$0	Up to $99 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN B

MEDICARE (PART A) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	$100	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			

First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out patient drugs and inpatient respite care	$0	Balance

PLAN C

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0

PLAN C

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance
PLAN D			
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR			
*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
AT HOME RECOVERY SERVICES – NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the # of Medicare approved visits, not to exceed 7 each week	
Calendar year maximum	$0	$1,600	
OTHER BENEFITS – NOT COVERED BY MEDICARE			
FOREIGN TRAVEL – NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PLAN E			
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD			
*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance
PLAN E			
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR			

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL -- LABORATORY -- SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN E

OTHER BENEFITS -- NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan F will not begin until after out of pocket expenses are $1500. Out of pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductible for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1530 DEDUCTIBLE** PLAN PAYS	IN ADDITION TO $1530 DEDUCTIBLE** YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
-Additional 365 days	$0	100% of Medicare eligible expenses	$0
-Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterick), your Part B deductible will have been met for the calendar year.

**This deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1530 DEDUCTIBLE** PLAN PAYS	IN ADDITION TO $1530 DEDUCTIBLE** YOU PAY
MEDICAL EXPENSES -- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			

First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care Services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0

PLAN F

OTHER BENEFITS NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used			
Additional 365 days	$0	100% of Medicare eligible expenses	$0
Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
AT HOME RECOVERY SERVICES NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			

Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the # of Medicare approved visits, not to exceed 7 each week	
Calendar year maximum	$0	$1,600	

OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN H

MEDICARE (PART B) – MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	0%	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN H

OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			
While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN I

MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
AT HOME RECOVERY SERVICES NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the # of Medicare approved visits, not to exceed 7 each week	
Calendar year maximum	$0	$1,600	

OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN J

MEDICARE (PART A) HOSPITAL SERVICES – PER BENEFIT PERIOD

1

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1530 DEDUCTIBLE** PLAN PAYS	AFTER YOU PAY $1530 DEDUCTIBLE** YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $792	$792 (Part A deductible)	$0
61st thru 90th day	All but $198 a day	$198 a day	$0
91st day and after:			

While using 60 lifetime reserve days	All but $396 a day	$396 a day	$0
Once lifetime reserve days are used			
Additional 365 days	$0	100% of Medicare eligible expenses	$0
Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $99 a day	Up to $99 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $1500 deductible. Benefits from the high deductible Plan J will not begin until out of pocket expenses are $1500. Out of pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1530 DEDUCTIBLE** PLAN PAYS	IN ADDITION TO $1530 DEDUCTIBLE** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
AT HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the # of Medicare approved visits, not to exceed 7 each week	
Calendar year maximum	$0	$1,600	
OTHER BENEFITS - NOT COVERED BY MEDICARE			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50% $3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as, fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs]

(4) Notice regarding policies or certificates which are not Medicare supplement policies.

(a) Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under 42 U.S.C. 1395 et. seq., disability income policy, or other policy identified in Section 2(3) of this administrative regulation issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

(b) The notice shall:

1. Either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy; or

2. If no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds

(c) The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the insurance company."

(d) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in Section 10 of this administrative regulation, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 10. Disclosure Statements. (1) 42 U.S.C. 1395ss(d)(3)A prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

(2) A health insurance policy that duplicates Medicare shall include one (1) of the following disclosure statements, according to the particular policy type involved, on the application or together with the application:

(a) HIPMC-MS-4 (07/05) [~~(3/01)~~] shall be the original disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(b) HIPMC-MS-5 (07/05) [~~(3/01)~~] shall be the original disclosure statement for a policy that provides benefits for specified limited services;

(c) HIPMC-MS-6 (07/05) [~~(3/01)~~] shall be the original disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense incurred cancer, specified disease, and other types [~~type~~] of health insurance policies [~~policy~~] that limit [~~limits~~] reimbursement to named medical conditions;

(d) HIPMC-MS-7 (07/05) [~~(3/01)~~] shall be the original disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policies [~~policy~~] that pay [~~pays~~] a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;

(e) HIPMC-MS-8 (07/05) [~~(3/01)~~] shall be the original disclosure statement for an indemnity policy and other policy that pay [~~pays~~] a fixed dollar amount per day, excluding a long-term care policy;

(f) HIPMC-MS-9 (07/05) [~~(3/01)~~] shall be the original disclosure statement for a policy that provides benefits upon both an expense-incurred and fixed indemnity basis;

(g) HIPMC-MS-10 (07/05) [~~(3/01)~~] shall be the original disclosure statement for other health insurance policies not specifically identified in paragraphs (a) through (f) of this subsection;

(h) HIPMC-MS-11 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for a policy that provides benefits for expenses incurred for an accidental injury only;

(i) HIPMC-MS-12 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for a policy that provides benefits for specified limited services;

(j) HIPMC-MS-13 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for a policy that reimburses expenses incurred for a specified disease or other specified impairment. This includes expense-incurred cancer, specified disease, and other types [~~type~~] of health insurance policies [~~policy~~] that limit [~~limits~~] reimbursement to named medical conditions;

(k) HIPMC-MS-14 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for a policy that pays fixed dollar amounts for a specified disease or other specified impairment. This includes cancer, specified disease, and other health insurance policies [~~policy~~] that pay [~~pays~~] a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy;

(l) HIPMC-MS-15 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for a policy that provides benefits upon both an expense incurred and fixed indemnity basis,

(m) HIPMC-MS-16 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for an indemnity policy and other policies [~~policy~~] that pay [~~pays~~] a fixed dollar amount per day, excluding a long-term care policy; and

(n) HIPMC-MS-17 (07/05) [~~(3/01)~~] shall be the alternative disclosure statement for other health insurance policies not specifically identified in paragraphs (h) through (m) of this subsection.

(3) A disclosure statement shall not vary from the incorporated statements in terms of language or format (type size, type proportional spacing, bold type character, line spacing, and usage of boxes around text).

(4) In accordance with 42 U.S.C. 1395 ss (d)(3)(A), an insurer shall be [~~is~~] prohibited from selling a Medicare supplement policy to a person who already has a Medicare supplement policy, except as a replacement.

(5) Property/casualty and life insurance policies shall [~~are~~] not be considered health insurance.

(6) Disability income policies shall [are] not be considered to provide benefits that duplicate Medicare.

(7) The federal law shall [~~does~~] not preempt state laws that are more stringent than the federal requirements.

(8) The federal law shall [~~does~~] not preempt existing state form filing requirements.

Section 11. With respect to changes made to this administrative regulation to comply with KRS 304.14-500 and 42 U.S.C. 1395w-101-1395w-152, which includes provisions effective January 1, 2006, an issuer may:

(1) Continue to use currently-approved forms, as appropriate, through December 31, 2005;

(2) Offer any authorized Medicare supplement plan upon approval by the executive director; and

(3) Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304.14-500, 42 U.S.C. 1395w-101-1395w-152, and this administrative regulation.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "HIPMC-MS-4 (3/01)";
(b) "HIPMC-MS-5 (07/05) [~~(3/01)~~]";
(c) "HIPMC-MS-6 (07/05) [~~(3/01)~~]";
(d) "HIPMC-MS-7 (07/05) [~~(3/01)~~]";
(e) "HIPMC-MS-8 (07/05) [~~(3/01)~~]";
(f) "HIPMC-MS-9 (07/05) [~~(3/01)~~]";
(g) "HIPMC-MS-10 (07/05) [~~(3/01)~~]";
(h) "HIPMC-MS-11 (07/05) [~~(3/01)~~]";
(i) "HIPMC-MS-12 (07/05) [~~(3/01)~~]";
(j) "HIPMC-MS-13 (07/05) [~~(3/01)~~]";
(k) "HIPMC-MS-14 (07/05) [~~(3/01)~~]";
(l) "HIPMC-MS-15 (07/05) [~~(3/01)~~]";
(m) "HIPMC-MS-16 (07/05) [~~(3/01)~~]"; [~~and~~]
(n) "HIPMC-MS-17 (07/05) [~~(3/01)~~]" and
(o) "HIPMC-MS-21 (07/05).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [~~Department~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [~~department's~~] internet Web site at http://doi.ppr.ky.gov [~~www.doi.state.ky.us~~].

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 10 a.m., (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 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. 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 August 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: Carrie Banahan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation details the policy provisions and terms as well as establishes minimum benefit standards and required disclosures for Medicare supplement health insurance policies in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the Medicare supplement insurance policies issued in the commonwealth comply with the established federal requirements regarding benefits and disclosures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), 304.14-510, 304.14-510, and 304.38-150, which authorize the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for benefits and disclosures in Medicare supplement insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for disclosures and benefits.

(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 changes made by this amendment reflect the addition of Medicare Part D, the prescription drug benefit and the addition of Medicare standard supplement insurance policies K and L, as required under the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required to implement changes to Medicare supplement insurance policy requirements enacted in the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), 304.14-510, 304.32-250, and 304.38-150, which authorize the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for benefits and disclosures in Medicare supplement insurance policies and complies with requirements of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will incorporate the changes and continue to implement, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for disclosures and benefits.

(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 the 40 insurers that are authorized to write Medicare supplement insurance policies. The regulation will also affect policyholders of Medicare supplement insurance policies issued in Kentucky.

(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: As the amendment to this administrative regulation implements changes that are required by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the insurers authorized to sell Medicare supplement insurance policies in the Commonwealth of Kentucky will only be required to comply with the new federal requirements. Persons who purchase Medicare supplement insurance policies will benefit by new choices created by the addition of 2 new standard policies.

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

(a) Initially: The Office of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Office of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing budget of the 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: The Office of Insurance does not anticipate that the implementation of the amendment to this administrative regulation will require an increase in fees or funding.

(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, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all insurers that are currently authorized to sell Medicare supplement insurance policies in the Commonwealth of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:400. Marketing and sales practices in Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500-304.14-550, 304.17-311, 304.18-034, 304.32-275, 304.38-205, 29 U.S.C. 1002, 42 U.S.C. 1395-1395ggg, 1396, 42 U.S.C. 1395w-101-1395w-152

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14.510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for marketing and sales practices in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-500(1).

(2) "Bankruptcy" means a Medicare Advantage [~~+Choice~~] organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in this state

(3) "Certificate" is defined in KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) [~~"Commissioner" is defined in KRS 304.1-050(1).~~

~~(6)~~] "Compensation" means pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate such as bonuses, gifts, prizes, awards, and finders' fees.

(6) [~~(7)~~] "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(7) [~~(8)~~] "Creditable coverage" is defined in KRS 304.17A-005(7).

(8) [~~(9)~~] "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002.

(9) "Executive director" means the Executive Director of the Office of Insurance

(10) "Insolvency" means an insurer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(11) "Insurance policy" means an insurance policy; a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; and an enrollee contract issued by a health maintenance organization.

(12) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement polices or certificates.

(13) "Medicare" is defined in KRS 304.14-500(4).

(14) "Medicare Advantage [~~+Choice~~] plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S C. 1395w-28(b)(1), and includes the following:

(a) A coordinated care plan which provides health care services, including the following:

1. A health maintenance organization plan with or without a point-of-service option;

2. A plan offered by a provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage [~~+Choice~~] medical savings account; and

(c) A Medicare Advantage [~~+Choice~~] private fee-for-service plan.

(15) "Medicare Select policy" or "Medicare Select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(16) "Medicare supplement policy" is defined in KRS 304.14-500(3).

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

(18) "PACE" means a program for all-inclusive care for the elderly under 42 U.S.C. 1396.

(19) [~~(18)~~] "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(20) [~~(19)~~] "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Open Enrollment. (1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

(a) An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and

(b) The applicant is enrolled for benefits under Medicare Part B.

(2) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under subsection (1) of this section without regard to age

(3)(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period reference in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. Pursuant to 42 U.S.C. 1395ss(s)(2)(D)(ii), the secretary shall specify the manner of the reduction under this subsection.

(4) Except as provided in Sections 2(1)(a), 3, and 12 [~~Section 42(1)~~] of this administrative regulation, this administrative regulation shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

Section 3. Guaranteed [~~Guarantee~~] Issue for Eligible Persons. (1) Guaranteed [~~Guarantee~~] issue.

(a) Eligible persons shall be those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, [~~or~~] disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the issuer;

2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan [~~that provides health benefits that supplement the benefits under Medicare~~]; and the plan terminates, the plan ceases to provide all the benefits under Medicare, or the plan ceases to provide all the supplemental health benefits to the individual;

(b) An individual that is enrolled with a Medicare Advantage [~~+Choice~~] organization under a Medicare Advantage [~~+Choice~~] plan under Part C of Medicare and:

1. The individual is sixty-five (65) years of age or older, is enrolled with a PACE provider under 42 U.S.C. 1396, and there are circumstances similar to those described in subparagraph 2 of this paragraph that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage [~~+Choice~~] plan; or

2. Any of the following circumstances apply:

a. The certification of the organization or plan under this part has been terminated;

b. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, pursuant to 42 U.S.C. 1395w-21(e)(4)(B), but not including termination of the individual's enrollment on the basis described in 42 U.S.C. 1395w-21(g)(3)(B) (if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under 42 U.S.C. 1395w-26), or termination of the plan for all individuals

within a residence area,

d. The individual demonstrates, in accordance with the guidelines established by the secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards;

(ii) The organization, agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

e. The individual meets other exceptional conditions as the secretary may provide

(c)1. An individual that is enrolled with any of the following

a. An eligible organization under a contract under 42 U.S.C. 1395mm regarding Medicare risk or cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under 42 U.S.C. 1395l(a)(1)(A) regarding the health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage pursuant to paragraph (b) of this subsection;

(d) An individual that is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1.a. The insolvency of the issuer or bankruptcy of the nonissuer organization; or

b. The involuntary termination of coverage or enrollment under the policy;

2. The issuer of the policy substantially violated a material provision of the policy; or

3. The issuer, an agent, or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)1. An individual that was enrolled under a Medicare supplement policy who terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare Advantage [~~+Choice~~] organization under a Medicare Advantage [~~+Choice~~] plan under Part C of Medicare;

b. An eligible organization under a contract under 42 U.S.C. 1395mm regarding Medicare risk or cost;

c. Any similar organization operating under demonstration project authority;

d. Any PACE Program under 42 U.S.C. 1396;

e. Any organization under agreement under 42 U.S.C. 1395l(a)(1)(A) regarding health care prepayment plan; or

f. A Medicare Select policy; and

2. The subsequent enrollment under paragraph (e)1 of this subsection is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under 42 U.S.C. 1395w-21(e) of the federal Social Security Act; or

(f) An individual who, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in:

1. A Medicare Advantage [~~+Choice~~] plan under Part C of Medicare or with a PACE provider under 42 U.S.C. 1396; and

2. Disenrolls from the plan or program no later than twelve (12) months after the effective date of enrollment; or []

(g) An individual that enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (5)(d) of this section.

(3) Guaranteed issue time periods.

(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall:

1. Begin on the later of:

a. The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

b. The date that the applicable coverage terminates or ceases; and

2. End sixty-three (63) days thereafter [~~after the date of the applicable notice~~];

(b) For an individual described in subsection (2)(b), (c), (e), and (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period shall begin on the date that the individual receives a notice of termination and end sixty-three (63) days after the date the applicable coverage is terminated,

(c) For an individual described in subsection (2)(d)1 of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of:

1. The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice, if any; or

2. The date that the applicable coverage is terminated;

(d) For an individual described in subsection (2)(b), (d)2, 3, (e) or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before the effective date of the disenrollment and end on the date that is sixty-three (63) days after the effective date; [~~and~~]

(e) In the case of an individual described in subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notices pursuant to Section 188(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(f) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and end on the date that is sixty-three (63) days after the effective date.

(4) Extended Medigap access for interrupted trial periods

(a) For an individual described in subsection (2)(e) of this section whose enrollment with an organization or provider described in subsection (2)(e) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section;

(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or in a program described in subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an interviewing enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(e) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(e)1 of this section or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(5) The Medicare supplement policy to which eligible persons are entitled shall be the following:

(a) A person eligible pursuant to subsection (2)(a), (b), (c), or (d) of this section shall be entitled to a Medicare supplement policy which has a benefit package classified in 806 KAR 17:390, Section 7(5) as Plan A, B, C, [~~or~~] F (including F with a high deductible), K, or L offered by an issuer.

(b) 1. Subject to subparagraph 2 of this paragraph a person eligible pursuant to subsection (2)(e) of this section shall be eligible to the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not available, a policy described in subsection (5) [~~(3)~~](a) of this section.

2. After December 31, 2005, a person who was most recently enrolled in a Medicare supplement policy with an outpatient pre-

scription drug benefit, shall be entitled to a Medicare supplement policy, which is

1. Available from the same issuer but modified to remove outpatient prescription drug coverage; or

b. At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by an issuer.

(c) A person eligible pursuant to subsection (2)(f) of this section shall be entitled to any Medicare supplement policy offered by any issuer.

(d) A person eligible pursuant to subsection (2)(g) of this section shall be entitled to a Medicare supplement policy, that:

1. Has a benefit package classified as Plan A, B, C, F (including F with a high deductible, K, or L; and

2. Is offered and available for issuance to new enrollees by the same issuer that issued the person's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions.

(a) When an event as described in subsection (2) of this section occurs, resulting in loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This notice shall be communicated contemporaneously with the notification of termination.

(b) When an event described in subsection (2) of this section occurs, resulting in cessation of enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (1)(b) of this section. This notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

Section 4. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the executive director [~~commissioner~~] in accordance with filing requirements and procedures prescribed by KRS 304.14-120.

(2) An issuer shall file, with the executive director, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits pursuant to 42 U.S.C. 1395W-101-1395w-152.

(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the executive director [~~commissioner~~] in accordance with KRS 304.14-120.

(4)(a) [~~(3)(a)~~] Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the executive director [~~commissioner~~], up to four (4) additional policy forms or certificate forms which may be an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy, for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage; and

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(5)(a) [~~(4)(a)~~] Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the executive director [~~commissioner~~]. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the executive director [~~commissioner~~]in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the executive director [~~commissioner~~], the issuer shall not offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the executive director [~~commissioner~~] of the discontinuance. The period of discontinuance may be reduced if the executive director [~~commissioner~~] determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The executive director [~~commissioner~~] may approve a change to the differential which is in the public interest.

(6)(a) [~~(5)(a)~~] Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 806 KAR 17:420, Section 2(2).

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An issuer shall not present for filing or approval, a rate structure for its Medicare supplement policies or certificates issued after the effective date of the administrative regulation based upon a structure or methodology with any groupings attained ages greater than one (1) year. The ratio between rates for successive ages shall exhibit a smooth pattern as age increases.

Section 5. Permitted Compensation Arrangements. (1) An issuer or other entity may provide a commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for not less than five (5) years.

(3) An issuer or other entity shall not provide compensation to its agents or other producers, and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

Section 6. Required Disclosure Provisions. Medicare supplement policies shall be in compliance with 806 KAR 17:390, Section 9.

Section 7. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. If a Medicare supple-

ment policy or certificate is to replace another health insurance policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, HIPMC-MS-1 (07/05) [(3/01)]. Direct response issuers shall present the comparison statement to the applicant not later than when the policy is delivered. Agents shall:

(a) Obtain the signature of the applicant on the comparison statement,

(b) Sign the comparison statement; and

(c) Send the comparison statement to the issuer. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application.

(a) The applicant currently has [another] Medicare supplement, Medicare Advantage, Medicaid coverage, or another [other] health insurance policy or certificate in force; or

(b) A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent containing the following [these] questions and statements may be used:

1. Statements.

a. You do not need more than one (1) Medicare supplement policy.

b. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

c. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

d. If after purchasing this policy you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended for twenty-four (24) months, if requested during your entitlement to benefits under Medicaid. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially-equivalent policy) will be reinstituted [reinstated] if requested within ninety (90) days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

e. If you are eligible for, and have enrolled in, a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that policy is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs, and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of suspension.

f. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid Program, including benefits as a qualified Medicare beneficiary (QMB) and a specified low-income Medicare beneficiary (SLMB).

2. Questions. If you have lost or are losing other health insurance coverage and have received notice from your prior insurer saying that you were eligible for guaranteed issue of a Medicare supplemental insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS. (Please mark Yes or No below with an "X") To the best of your knowledge:

a. Did you turn age sixty-five (65) in the last six (6) months? Yes ___ No ___;

b. Did you enroll in Medicare Part B in the last six (6) months? Yes ___ No ___;

c. If you did enroll in Medicare Part B in the last six (6) months, what is the effective date? ___/___/___;

d. Are you covered for medical assistance through the state Medicaid Program? (NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer No to this question) Yes ___ No ___;

e. If you are covered for medical assistance through the state Medicaid Program, will Medicaid pay your premiums for this Medicare supplement policy? Yes ___ No ___;

f. Do you receive any benefits from the state Medicaid Program other than payments toward your Medicare Part B premium? Yes ___ No ___;

g. If you have had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example a Medicare Advantage Plan or a Medicare HMO or PPO), fill in the start and end dates below. If you are still covered under this plan, leave the "End" blank. Start ___/___/___ End ___/___/___;

h. If you are still covered under a Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy? Yes ___ No ___;

i. Was this your first time in this type of Medicare Plan? Yes ___ No ___;

j. Did you drop a Medicare supplement policy to enroll in the Medicare plan? Yes ___ No ___;

k. Do you have another Medicare supplement policy in force? Yes ___ No ___;

l. If you do have another Medicare Supplement policy in force, what policy do you have (optional for Direct Mailers)?;

m. If you do have another Medicare supplement policy in force, do you intend to replace your current Medicare supplement policy with this policy? Yes ___ No ___;

n. Have you had coverage under any other health insurance within the past sixty-three (63) days? (for example, an employer, union, or individual plan) Yes ___ No ___;

o. If you have had coverage under any other health insurance within the past sixty-three (63) days, with what company and what was the type of policy?; and

p. If you have had coverage under any other health insurance within the past sixty-three (63) days, what were the dates of coverage under the policy? If you are still covered under this plan, leave the "End" blank. Start ___/___/___ End ___/___/___. [a. Do you have another Medicare supplement policy or certificate in force?

(i) If so, with which company?

(ii) If so, do you intend to replace your current Medicare supplement policy with this policy or certificate?

b. Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(i) If so, with which company?

(ii) What kind of policy?

c. Are you covered for medical assistance through the state Medicaid Program:

(i) As a specified low income Medicare beneficiary (SLMB)?

(ii) As a qualified Medicare beneficiary (QMB)?

(iii) For other Medicaid medical benefits?]

(3) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer (other than a direct response issuer), or its agent, shall furnish the applicant, prior to

issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant, when the policy is issued the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by subsection (5) of this section for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT OR MEDICARE ADVANTAGE INSURANCE

(Insurer Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to terminate existing Medicare supplement or Medicare Advantage [health] insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all health insurance you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage You should evaluate the need for other health coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE):

I have reviewed your current health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ My plan has outpatient prescription drug coverage, and I am enrolling in Medicare Part D.

___ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment.(Optional only for direct mailers)

___ Other (please specify).

(a) Note: If the insurer of the Medicare supplement policy being applied for does not or is otherwise prohibited from imposing preexisting condition limitation, please skip to statement (b) below Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent that time was spent (depleted) under the original policy.

(c) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it

Signature of Agent or Other Representative

Typed Name and Address of Agent:

The above "Notice to Applicant" was delivered to me on

Date

Applicant's Signature.

(7) Subsection (6)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation

Section 8. Filing Requirements for Advertising of Medicare Supplement Policies (1) An issuer shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written publication, radio, or television, to the executive director [commissioner] prior to use Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the executive director [commissioner] and notice of the disapproval has been given to the issuer.

(2) Issuers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers and agents shall not use "leads" if the solicitation materials have been disapproved by the executive director [commissioner]

Section 9. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or issuer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer.

Section 10 Standards for Marketing (1) An issuer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS 304.12 and 806 KAR 12.092, the following acts and practices shall be prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare supplement", "Medigap", "Medicare Wrap-Around", and words of similar import shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 11. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of Medicare supplement or policy or certificate [coverage] that will provide an individual more than one (1) Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C, unless the effective date of the coverage is after the termination date of the individual's part C coverage.

Section 12 Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Penods, and Probationary Penods in Replacement Policies or Certificates (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate for similar benefits, to the extent this time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 13. With respect to changes made to this administrative regulation to comply with KRS 304 14-500 and 42 U.S C. 1395w-101-395w-152, which includes provisions effective January 1, 2006, an issuer may:

(1) Continue to use currently-approved forms, as appropriate, through December 31, 2005;

(2) Offer any authorized Medicare supplement plan upon approval by the executive director; and

(3) Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304.14-500, 42 U.S.C. 1395w-101 - 1395w-152, and this administrative regulation.

Section 14. Incorporation by Reference. (1) "HIPMC-MS-1 (3/01)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m. Forms may also be obtained on the office's [department's] internet web site at http://doi.ppr.ky. gov [www.doi.state.ky.us]

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 11 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23rd, 2005, at 10 a.m., (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 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. 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 August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carrie Banahan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum standards for marketing and sales practices for Medicare supplement insurance policies in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to ensure that the Medicare supplement insurance policies issued in the commonwealth comply with the established federal requirements regarding sales and marketing practices

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304 2-110(1), 304.14-510, 304.32-250, and 304 38-150, which authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for marketing and sales practices in Medicare supplement insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for sales and marketing practices.

(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 changes made by this amendment reflect the addition of Medicare Part D, the prescription drug benefit, as required under the Medicare Prescription Drug Improvement and Modernization Act of 2003. Additionally, the Office of Insurance has elected to include 2 changes in this regulation that are designed for consumer protection. The Office of Insurance has elected to include a provision that requires insurers to increase premium rates for attained age policies on an annual basis rather than having longer intervals between the increases. The Office of Insurance has also included a provision that allows a Medicare eligible beneficiary who is terminated from a large group health plan the ability for guaranteed issue of certain Medicare supplement standard insurance policies.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required to implement changes to Medicare supplement insurance policy requirements enacted in the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), 304.14-510, 304.32-250, and 304.38-150, which authorize the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for marketing and sales practices in Medicare supplement insurance policies and complies with the requirements of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will incorporate the changes and continue to implement, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for sales and marketing practices.

(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 the 40 insurers that are authorized to write Medicare supplement insurance policies. The regulation will also affect policyholders of Medicare supplement insurance policies issued in Kentucky.

(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: As the

amendment to this administrative regulation mainly implements changes that are required by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the insurers authorized to sell Medicare supplement insurance policies in the Commonwealth of Kentucky will be required to comply with the new federal requirements. Persons who purchase Medicare supplement insurance policies will benefit by new choices created by the addition of 2 new standard policies. The change made to the requirement for premium increases in attained age policies will benefit both insurers and attained age policyholders policies because attained age policyholders will experience gradual increases on an annual basis and not be so adversely impacted by larger increases that would occur if the premium rates were adjusted less often than annually. The provision that allows a Medicare-eligible beneficiary who is terminated from a large group health plan the ability for guaranteed issue of certain Medicare supplement standard insurance policies will ensure that Medicare eligible beneficiaries, terminated from large group health insurance plans, will be able to purchase Medicare supplement insurance policies that they would have been eligible for were they not enrolled in the large group. 27 states, including Illinois, Indiana, and Missouri, have adopted this guaranteed issue provision.

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

(a) Initially: The Office of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Office of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing budget of the 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: The Office of Insurance does not anticipate that the implementation of the amendment to this administrative regulation will require an increase in fees or funding.

(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, nor does it directly or indirectly increase any fees.

(9) TIERING. Is tiering applied?: No. This administrative regulation applies equally to all insurers that are currently authorized to sell Medicare supplement insurance in the Commonwealth of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:420. Rates, premiums and loss ratio requirements in Medicare supplement insurance policies.

RELATES TO: KRS 304.14-500-304.14-550, 304.17-311, 304.18-034, 304.32-275, 304.38-205, 42 U.S.C. 1395-1395ggg 42 U.S.C. 1395w-101 - 1395w-152

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director [~~Commissioner~~] of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.38. This administrative regulation establishes minimum standards for rates, premiums, and loss ratio requirements in Medicare supplement insurance policies.

Section 1. Definitions. (1) "Certificate" is defined in KRS 304.14-500(2).

(2) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(3) "Executive director" means the Executive Director of the Office of Insurance [~~Commissioner" is defined in KRS 304.1-050(1)~~].

(4) "Issuer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement polices or certificates.

(5) "Medicare" is defined in KRS 304.14-500(4).

(6) "Medicare supplement policy" is defined in KRS 304.14-500(3).

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

(8) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(9) [~~(8)~~] "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards.

(a)1. Pursuant to KRS 304.14-530, a Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form, which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies.

2. This calculation shall be in accordance with accepted actuarial principles and:

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for such period; and

b. Incurred health care expenses, where coverage is provided by a health maintenance organization, shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs [~~In accordance with accepted actuarial principles and practices~~].

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage is expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection when combined with actual experience beginning with the effective date of this administrative regulation to date; and

3. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection over the entire future period for which the

rates are computed to provide coverage

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the executive director [~~commissioner~~] by May 31 of each year the data contained in the following applicable reporting forms for each type in a standard Medicare supplement benefit plan:

1. A Medicare Supplement Refund Calculation Form, HIPMC-MS-18 (3/01), shall be used to calculate the amount of refund or credit against premiums.

2. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies, HIPMC-MS-19 (3/01), shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for individual policies

3. A Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies, HIPMC-MS-20 (3/01), shall be used to calculate the benchmark ratio used to determine the refund or credit against premiums for group policies.

(b) When completing a Medicare Supplement Refund Calculation Form, as required by paragraph (a)1 of this subsection, the following requirements apply:

1. If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation shall be required.

2. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan.

3. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the issuer shall make the refund or credit calculation separately for:

1. All individual policies combined, including all group policies subject to an individual loss ratio standard when issued; and

2. All other group policies combined for experience.

(d) A refund or credit shall be made only if the benchmark loss ratio exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a minimal level The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the secretary, but shall not be less than the average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of premium rates.

(a) An issuer of Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually for approval by the executive director [~~commissioner~~], in accordance with the filing requirements and procedures prescribed by KRS 304.14-120, the following:

1. Rates;

2. Rating schedule; and

3 Supporting documentation, including ratios or incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed.

(c) The demonstration shall exclude active life reserves.

(d) An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(e) As soon as practicable prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in Kentucky shall file with the executive director [~~commissioner~~], in accordance with KRS 304.14-120:

1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable Medicare supplement policies or certificates. Supporting documents as necessary to justify the adjustment shall accompany the filing.

2. Appropriate premium adjustments necessary to produce an expected loss ratio under the policies and certificates that will conform to the minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for Medicare supplement policies or certificates. A premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection, shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date

3. If an issuer fails to make premium adjustments acceptable to the executive director [~~commissioner~~], the executive director [~~commissioner~~] may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section

(f) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. These riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy or certificate.

(4) Public hearings. The executive director [~~commissioner~~] may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2.

Section 3. With respect to changes made to this administrative regulation to comply with KRS 304.14-500 and 42 U S C 1395w-101 - 1395w-152, which includes provisions effective January 1, 2006, an issuer may:

(1) Continue to use currently-approved forms, as appropriate, through December 31, 2005;

(2) Offer any authorized Medicare supplement plan upon approval by the executive director; and

(3) Upon the effective date of this administrative regulation, file changes to forms with the executive director to comply with KRS 304 14-500, 42 U S C 1395w-101 - 1395w-152, and this administrative regulation

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

(a) "HIPMC-MS-18 (3/01)";

(b) "HIPMC-MS-19 (3/01)"; and

(c) "HIPMC-MS-20 (3/01)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [~~Department~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [~~department's~~] Internet web site at http://doi.ppr.ky.gov [~~www.doi.state.ky.us~~].

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 14, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 10 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 31, 2005. Send written notifi-

cation of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Carrie Banahan, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum standards for rates, premiums and loss ratios for Medicare supplement insurance policies in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the Medicare supplement insurance policies issued in the commonwealth comply with the established federal requirements regarding rates, premiums, and loss ratios.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), 304.14-510, 304.32-250, and 304.38-150, which authorize the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for rates, premiums, and loss ratio requirements in Medicare supplement insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for rates, premiums and loss ratios.

(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 changes made by this amendment reflect the addition of Medicare Part D, the prescription drug benefit, as required under the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required to implement changes to Medicare supplement insurance policy requirements enacted in the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), 304.14-510, 304.32-250, and 304.38-150, which authorize the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes minimum standards for rates, premiums and loss ratio requirements in Medicare supplement insurance policies and complies with the requirements of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will incorporate the changes and continue to implement, for Medicare supplement insurance policies sold in Kentucky, the federal requirements established for rates, premiums and loss ratios.

(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 the 40 insurers that are authorized to write Medicare supplement insurance policies. The regulation will also affect policyholders of Medicare supplement insurance policies issued in Kentucky.

(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: As the amendment to this administrative regulation implements changes that are required by the Medicare Prescription Drug Improvement and Modernization Act of 2003, The insurers authorized to sell Medicare supplement insurance policies in the Commonwealth of Kentucky will be required to comply with the new federal requirements. Persons who purchase Medicare supplement insurance policies will benefit by new choices created by the addition of 2 new standard policies.

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

(a) Initially: The Office of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Office of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing budget of the 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: The Office of Insurance does not anticipate that the implementation of the amendment to this administrative regulation will require an increase in fees or funding.

(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, nor does it directly or indirectly increase any fees

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all insurers that are currently authorized to sell Medicare supplement insurance in the Commonwealth of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Property and Casualty
(Amendment)

806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021(3), 186A.040, 186A.095, 304.39-080, 304.39-083, 304.39-085, 304.39-090, 304.39-117

STATUTORY AUTHORITY: KRS 186.021, 304.2-110(1), 304.39-083, 304.39-085, 304.39-087, 304.39-117, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.021 requires the Executive Director of the Office [~~Commissioner~~] of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Office of Insurance [~~department~~] to promulgate an administrative regulation that establishes the requirements for the insurance card that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-084 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the insurance card; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy, the methods for presenting proof of motor vehicle insurance to a county clerk; and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or policy of motor vehicle insurance is cancelled or not renewed.

Section 1. Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance [~~Commissioner" is defined by KRS 304.1-050~~].

(2) "Insurer" means an insurer or self-insurer who provides security covering a motor vehicle pursuant to KRS 304.39-080.

(3) "Motor vehicle insurance policy" means an insurance contract that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS

186 021 and 304 39-080

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

(5) "Person" is defined by KRS 304 1-020

(6) "Personal lines motor vehicle policy" is an insurance policy, issued by an insurance carrier authorized to do business in the Commonwealth of Kentucky, which insures a personal motor vehicle.

Section 2. Insurance Card to be Provided by Insurers. (1) The insurance card required by KRS 304.39-117 shall be provided to the insured at the time a policy is issued, renewed, or amended to include a vehicle.

(2) Copies of the insurance card.

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single insurance card shall be provided for each motor vehicle. Two (2) copies of the insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) If the motor vehicle insurance policy covers five (5) or more vehicles, a copy of the insurance card shall be provided for each vehicle covered by the policy. Sufficient copies of the insurance card shall be provided to the policyholder so that the policyholder will have a single insurance card for the county clerk of each county in which the policyholder has motor vehicles registered.

(3) Guidelines for size and format of the insurance card.

(a) The insurance card shall be:

1. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

2. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or

3. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

(b) The insurance card may vary slightly from the dimension requirements established in paragraph (a) of this subsection.

(c) The insurance card shall be on white paper with black or blue ink.

(4) Mandatory contents of the insurance card. The insurance card shall prominently display on its face the following information, to appear in the order listed:

(a) Title of the document: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE."

(b) The name of the insurance company and its five (5) [~~three (3)~~] digit code number assigned by the National Association of Insurance Commissioners (NAIC) [~~Department of Insurance~~];

(c) The name of the named insured.

(d) The effective date and expiration date of coverage. If the card is issued midterm, the card shall indicate the effective date of the coverage if different than the inception date of the policy;

(e) The policy number.

(f) The type of policy. If the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.1 or 19.2, the insurer shall indicate the policy type as "Personal" or "PL". If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.3 or 19.4, the insurer shall indicate the policy type as "Commercial" or "CL"; and

(g) The vehicle(s) insured:

1. If the insurance contract covers four (4) or fewer vehicles, the motor vehicle identification: year, make or model, and vehicle identification number (VIN) of each motor vehicle.

2. If the insurance contract covers five (5) or more motor vehicles, it shall state "Fleet." The insurer may elect to include the motor vehicle identification: year, make or model, and the VIN of each motor vehicle.

(5) Other information to be provided to the insured [~~insurer~~]. The insurer shall:

(a) Include the following information on the insurance card if the information required by subsection (4) of this section is not obscured[~~, include the following information on the insurance card~~]:

1. The insurer's logo;

2. A statement that establishes the procedure for contacting the insurer concerning a claim; and

3. The insurer's address; [~~and~~

~~4. The named insured's address;~~] or

(b) Include the information listed in paragraph (a) of this subsection on a separate document mailed with the insurance card.

(6) An insurer shall furnish with the insurance card the following written information [~~instructions that state~~]:

(a) Instructions that the insured shall keep a copy of the insurance card in each motor vehicle covered by the policy;

(b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle;

1. If so, the insured shall be informed that the proof of coverage information has been reported electronically to the Department of Vehicle Regulation. However, if the VIN does not appear in the database, the insured may be required to present a copy of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or

2. If not, the insured shall be instructed to present a copy of the insurance card to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and [~~The insured shall present a copy of the insurance card or other proof of compliance with KRS 304.39-080 as required by Section 3 of this administrative regulation to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal.~~]

(c) Instructions to compare the VIN appearing on the registration, insurance policy and card to the VIN affixed to the vehicle.

1. If the VIN [~~vehicle identification number~~] on the motor vehicle title and registration and the VIN [~~vehicle identification number~~] on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and [~~vehicle identification number on the motor vehicle~~] registration corrected;

2. [~~(d)~~] If the VIN [~~vehicle identification number~~] on the insurance card and the motor vehicle do not match, the policyholder shall contact the insurer [~~insurance company~~] to have the [~~vehicle identification number on the~~] insurance policy and card corrected. The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy [~~in the vehicle identification number numbers~~]. The telephone number shall be:

a. [~~1.~~] The phone number of a local agent of the insurer; or

b. [~~2.~~] A toll-free telephone number of the insurer.

[~~(7) Submission of the insurance card for approval. The insurer may file a copy of an insurance card with the commissioner for approval.~~

~~(a) If the commissioner approves the insurance card, the insurer shall not be subject to disciplinary action by the commissioner for a violation of this section of the administrative regulation for the period of time covered by the approval.~~

~~(b) The commissioner shall not approve the insurance card if the insurance card does not comply with the provisions of KRS 304.39-117 or this administrative regulation.~~]

Section 3. Methods of Proving Motor Vehicle Insurance. One [~~A person shall use~~] (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) The VIN appears as an insured motor vehicle in the database;

(2) [~~(1)~~] A copy of the current insurance card;

(3) [~~(2)~~] A certificate of insurance issued by an [~~a general lines~~] insurance agent with a casualty line of authority licensed by Kentucky;

(4) [~~(3)~~] An insurance contract with a declaration page attached showing that the policy is in effect at the time the motor vehicle is being registered or transferred;

(5) [~~(4)~~] A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force; or

(6) [~~(5)~~] If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy.

(7) A letter from the Kentucky Office of Insurance serving as prima facie evidence of self insurance pursuant to KRS 304.39-

080(7)

Section 4. Beginning January 1, 2006, and each month thereafter, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide [~~Information to be Submitted by Insurers on Cancellation and Nonrenewal of Motor Vehicle Insurance Policies. (1) An insurer shall submit information on a motor vehicle insurance policy cancellation or nonrenewal on a computer cartridge, diskette, or magnetic tape that complies with the requirements established in subsections (3) and (4) of this section unless~~

~~(a) The insurer submits notices on less than fifty (50) policies per accounting month,~~

~~(b) The use of a computer cartridge, diskette, or magnetic tape will be an unreasonable burden on the insurer; or~~

~~(c) Other good cause not to use a computer cartridge, diskette, or magnetic tape is shown.~~

~~(2) If an insurer submits notices on less than fifty (50) policies per accounting month, the insurer shall submit the information on Form No. TC96-31, Manual Report of Insurance Cancellation (fifty (50) or less).~~

~~(3) Information on a computer cartridge, diskette, or magnetic tape shall comply with the field definitions and explanations established in the Cancellation Tape Data Entry Format.~~

~~(a) The cartridge, diskette, or tape shall have the accounting period clearly marked on its label. If the cartridge, diskette, or tape contains a correction for a prior accounting period, the label shall be marked "Correction".~~

~~(b) A cartridge shall:~~

~~1. Be a 3480 cartridge tape; and~~

~~2. Have:~~

~~a. An IBM standard label;~~

~~b. A logical record length of 300, and~~

~~c. A block size of 32700.~~

~~(c) A diskette shall:~~

~~1. Be a three and one half (3.5) inch, one and four tenths (1.4) meg, MS-DOS compatible diskette;~~

~~2. Contain records in ASCII with a record length of 300 bytes.~~

~~(d) A tape reel shall:~~

~~1. Be submitted if the insurer is unable to submit a cartridge or diskette; and~~

~~2. Have a:~~

~~a. Logical record length of 300; and~~

~~b. Block size of 32700.~~

~~(4) An insurer shall submit a sample of the cartridge, diskette, or tape to the department for approval of the format. A cartridge, diskette, or magnetic tape that does not comply with the format requirements shall be returned to the insurer for correction.~~

~~(5) Information required upon cancellation and nonrenewal. An insurer shall provide the following information to the Department of Vehicle Regulation if a policy is cancelled or not renewed:~~

~~(a)1. If the motor vehicle policy covers four (4) or less motor vehicles, the motor vehicle identification for each vehicle including the:~~

~~a. Year;~~

~~b. Make or model; and~~

~~c. Vehicle identification number; or~~

~~2. If the motor vehicle policy covers five (5) or more vehicles, the designation "Fleet";~~

~~(b) Name of the named insured;~~

~~(c) Policy number;~~

~~(d) Company code;~~

~~(e) Effective date of the termination of the motor vehicle insurance policy;~~

~~(f) Street, city, state, and zip code of the named insured;~~

~~(g) Format number denoting the type of media used for the insurance data;~~

~~(h) Effective date of the original policy;~~

~~(i) The Social Security number or driver's license number of the named insured; and~~

~~(j) The code denoting whether the policy was a cancellation or a nonrenewal.~~

~~(6) Unless the technology to edit the list is unavailable to the insurer, an insurer shall~~

~~(a) Edit the list of cancellations and nonrenewals prior to submitting the list to the Department of Vehicle Regulation; and~~

~~(b) Delete information on a policyholder if that person's policy was~~

~~1. Terminated and reinstated; or~~

~~2. Terminated and replaced by a policy issued by the same insurer.~~]

Section 5. For motor vehicles insured under a commercial lines or fleet policy, all insurers shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company.

Section 7. [~~6.~~] Incorporation by Reference (1) The following material is incorporated by reference:

(a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation (5/23/2005 edition); and [~~Cancellation Tape Data Entry Format (1996 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing.~~]

(b) [~~"Form No. TC96-31, Manual Report of Insurance Cancellations (Fifty (50) or Less) (November 1996 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing; and~~

~~(c)~~] "Form No. TC96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/05 [~~September 1996~~] edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation [~~Licensing~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, the Department of Vehicle Regulation, P. O. Box 2014, 200 Mero Street, Frankfort, Kentucky 40622 [~~Kentucky Department of Vehicle Regulation, Division of Motor Vehicle Licensing, P.O. Box 2014, State Office Building, Room 205, Frankfort, Kentucky 40601~~], Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at the Transportation Cabinet Web site: http://transportation.ky.gov/mvl/home.htm.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 9 a.m. ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, 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 establishes the requirements for the insurance card that an insurer is required to provide to the insured to demonstrate proof of motor vehicle insurance; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy; the methods for presenting proof of motor vehicle insurance to a county clerk; the requirements for notifying the Department of Vehicle Regulation if a policy is cancelled or not renewed; and the requirements for notifying the Department of Vehicle Regulation if a binder is cancelled

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the manner for insurers to present proof of motor vehicle insurance to the Department of Vehicle Regulation, the manner for motor vehicle owners to present proof of motor vehicle insurance to a county clerk, the manner for insurers to report coverage and cancellation or nonrenewal of coverage to the Department of Vehicle Regulation, and the requirements for the insurance card that an insurer is required to give to an insured.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.021 requires the Executive Director of the Office of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304 39-117 requires the Office of Insurance to promulgate an administrative regulation that establishes the requirements for the insurance card that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-084 require notification by an insurance agent or company to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the insurance card, the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy, the methods for presenting proof of motor vehicle insurance to a county clerk, and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or policy of motor vehicle insurance is cancelled or not renewed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that all insurers are providing standardized information regarding motor vehicle insurance to their insureds. This administrative regulation will also ensure that insurers are reporting information regarding the motor vehicles that they insure in a standardized format to county clerks and the Department of Vehicle Regulation. The electronic reporting will be more efficient for the Department of Vehicle Regulation, county clerks, and law enforcement in verifying that the required insurance coverage is in place on vehicles registered in Kentucky. This in turn will facilitate enforcement against uninsured vehicles.

(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 change the existing administrative regulation by requiring all insurers to electronically report, by Vehicle Information Number (VIN), information regarding personal automobile insurance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the provisions of KRS 304.39-087, as amended by 2004 Ky. Acts ch. 130, which requires every insurance company that writes liability insurance on personal motor vehicles in Kentucky to send the Department of Vehicle Regulation, on a monthly basis, a list of VINs of each covered personal motor vehicle and the name of each policyholder.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.39-087, as amended by 2004 Ky. Acts ch. 130, requires insurers to send to the Department of Vehicle Regulation a list of the VIN's of each personal motor vehicle covered by the insurer as of the last day of the preceding month and the name of each personal motor vehicle insurance policyholder. The reporting shall be electronically or by paper copy at the option of the Department of Vehicle Regulation. This amendment establishes the manner in which insurers must report this information.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that insurers are reporting information regarding the motor vehicles that they insure in a standardized format to the Department of Vehicle Regulation. The Reporting Guide consolidates instructions for the electronic reporting of coverage information on personal motor vehicles coverage, cancellation and nonrenewal information on all other vehicles, as well as binder cancellation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 200 insurers offering motor vehicle insurance in Kentucky, approximately 28,000 agents authorized to sell property and casualty insurance, all 120 county clerks, and the Department for Vehicle Regulation. It will also affect all law enforcement agencies including the Kentucky State Police, Vehicle Enforcement, City and County Police and Sheriffs. In addition, the regulation will affect all owners of personal motor vehicles.

(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: Insurers will be required to utilize the new electronic system for reporting insurance information for all personal motor vehicles that they insure, while continuing to report cancellation and nonrenewal of other policies. All 120 county clerks will be impacted in that the information within the electronic database will be a means to more efficiently establish proof of motor vehicle insurance. Agents will see efficiencies as well. Finally, the Department of Vehicle Regulation will be impacted as they are the state agency charged with maintaining the electronic database that will capture the information reported by the insurers regarding the personal motor vehicles that they insure.

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

(a) Initially: The Transportation Cabinet Division of Technology has estimated 6,717 total hours or $403,000 for the Mandatory Insurance Reporting system development.

(b) On a continuing basis: The Transportation Cabinet Division of Technology has estimated that it will cost $150,000 annually for the additional personnel, storage and processing

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The funding source for implementation and enforcement of this administrative regulation is the budget of the Kentucky Transportation Cabinet Division of Technology.

(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: At this time, it is not anticipated that an 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: There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No, tiering has been applied. Previously alternative reporting methods were made available to insurers reporting a small volume of business. This has been eliminated in order to achieve efficiencies.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office [department], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky.

EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. [~~EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction.~~] This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List."

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Office " means the Office of Housing, Buildings and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the office as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the office.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the office, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness,.032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by A. K. Industries.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclmate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1516W-US pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product is not approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater: Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models to be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25 Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve

29. Takagi Industrial Company USA, Inc , Instantaneous Water Heaters, Models: T-KLS, T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. Quietside Instantaneous Water Heater Models: QVW8 - 100, 120, 175 All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufactunng Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and

corrosion buildup superior water conditioners as manufactured by Kemtune, Inc

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(b) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings is included in this approval.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion.

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC.

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturers installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to 815 KAR 20.150. The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal.

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor.

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIPI 301-00.

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM".

(53) Base Products Corporation:

(a) Water powered pump: basepump.

(b) Battery back-up pump: hydropump.

1. Each model shall be installed with a Reduced Pressure Principle backflow preventer with copper piping only.

2. Approved for ground water removal only, and

3. Incoming water pressure must be fifty (50) psi to operate.

(54) Perma-Liner Industries, Inc. Lateral Lining System. This system is approved for pipe sizes three (3) inch through eight (8) inch for interior and exterior installations. Interior applications must be videoed before and after installation in addition to a five (5) pound air test or equivalent for a period of fifteen (15) minutes as referenced in 815 KAR 20:150, Section 4(2) or (3). Exterior applications must be videoed before and after in addition to a smoke test to comply with 815 KAR 20:150, Section 4(6). Permits are required for both applications.

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only.

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer.

JOHN W. CLAY
for LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 23, 2005, at 10 a.m., (EDT), in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established a parts and materials list that have been approved for use in the state of Kentucky.

(b) The necessity of this administrative regulation: To add new products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to add parts and materials to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows plumbers to utilize new and improved parts and materials

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

(a) How the amendment will change this existing administrative regulation: Will add new products for plumbing installations.

(b) The necessity of the amendment to this regulation: New parts and materials are constantly updated to allow plumbers to utilize the best and newest product on the market.

(c) How the amendment conforms to the content of the authorizing statute: By allowing new parts and materials to be utilized by plumbers.

(d) How the amendment will assist in the effective administration of the statutes: Assists plumbers in using new parts and materials in plumbing installations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those businesses that sell the products and the plumbers that install new products and materials.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: None, utilizes new products.

(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: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B 040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The office [~~department~~] is directed by KRS 318 130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation establishes the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means American Society of Sanitary Engineers and a copy of a specification identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and a copy of a specification identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur; and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service. An interior tank coating shall be from the list approved by the authority having jurisdiction.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall be prohibited except as approved by the authority having jurisdiction, and a suitable protective device shall be installed.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(6) Closed water systems, protection from excess pressure:

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions shall be installed in the cold water supply located near the water heater.

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20 020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:

a. Twice the effective opening of a potable water outlet; or

b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available, and be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
On models without built-in vacuum breakers:	
Dental units	CL at least 6 in. above flood level rim of bowl
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

(f) Barometric loop: applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. A backflow and back siphonage preventer shall be in an accessible location, preferable in the same room as the fixture or connection it protects. A device may be installed in a utility or service space. A device or air gap shall not be subject to flooding or freezing.

(h) Inspection of devices. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis. Records shall be kept on each inspection.

(i) Approval of devices. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph (l) of this subsection. A device installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

(j) Protection of potable water system. A potable water opening, outlet, or connection except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by a toxic substance or disease-causing organism.

2. Moderate hazard. Potential for contamination by a nontoxic but objectionable substance.

3. Minor hazard. Potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the

consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table.

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	ASSE No. 1013 AWWA C506 FCCCHR of USC CSA B 64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly For low hazard cross connections	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Commercial Pools	NONTOXIC: ASSE No. 1015 AWWA C506 FCCCHR of USC CSA B 64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections if there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	NONTOXIC: ASSE No 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	ASSE No. 1012 CSA B 64.3 Sizes 1/2" & 3/4"
(B) Backflow Preventer for Carbonated Beverage Machine	Two independent check valves with a vent to atmosphere	On potable water distribution lines serving beverage-dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system.	Postmix carbonated beverage machine	ASSE 1022
(C) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker in small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage if there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	ASSE No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	ASSE No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Machines, Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	ASSE No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	ASSE No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard	Acceptable Protection	
		Backflow	Backsiphonage

	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic substance		X		X	X	X		
B Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic substances		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	EACH CASE TREATED SEPARATELY				
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substance	X			X	X		X	X
2. Nontoxic substance		X		X	X	X	X	
H. Outlets to recirculating cooling tower								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point;

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench; and

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by a color marking, metal tag, or other appropriate method as may be approved by the governing authority.

(b)1. An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the word - "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting or valve.

3. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to

keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal or similar fixture

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage system or other water system

Section 7. Connections to Boilers. A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced. A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three and one-half (3 1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to a fixture. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold), polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69 or ASTM F-714, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications, cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) produced and labeled as ASTM F-1281, Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) produced and labeled as ASTM F-1282, copper tubing size PE produced and labeled as ASTM D-2737 for water service if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fitting, or fusion welded polypropylene pipe products which meet NSF 61 and 14 and ASTM 2389 approved for above ground only in sizes five-eighths (5/8) inch through six (6) inch ~~[fittings]~~.

(2) A plastic pipe or fitting shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring

(4) A polybutylene hot and cold water connector to a lavatory, sink or water closet shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for a cold water application.

(5) A fitting shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.

(6) Each joint in the water supply system shall be made of a screw, solder, or plastic joint. A cast iron water pipe joint may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If a chlorinated poly(vinyl chloride) (CPVC) joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 psi before backfilling. The applicable requirements of 815 KAR 20:060 and 815 KAR 20:073 shall be met.

(9) Joints between copper tubing and galvanized steel pipe. The joint between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 11. Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) A pressure or gravity tank shall have its supply line valved at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and a lawn sprinkler opening shall be valved. In residential construction, each fixture, except a bathtub or shower, shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment.

Section 13. Water Supply Protection. A concealed water pipe, storage tank, cistern, or other exposed pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

(a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater; and

(b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer's recommendation; and

(c) Be of a type approved by the department in an applicable administrative regulation.

(2)(a) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground.

(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

(3) A relief device shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution in a manner approved by the department in an applicable administrative regulation. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 PSI;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the plumbing code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS			
Maximum capacity of water supply line to tank	Diameter of Overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit. The applicable requirements established in 815 KAR 20.070 shall be met.

Section 20. Fire Protection Systems. A fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the riser pipe shall be graded to divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.

(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20.070.

JOHN CLAY
for LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY. July 14, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 11 a.m. ET in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: David Reichert, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of piping, pipe sizes for a potable water supply system, and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(b) The necessity of this administrative regulation: To provide a method of new installation for water supply pipes, fittings and materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to add new methods, parts and materials to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows plumbers to utilize new methods of installation.

(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: Will add new methods of installation for water supply and distribution.

(b) The necessity of the amendment to this regulation: New methods of installation for water supply and distribution are updated and utilized on an annual basis.

(c) How the amendment conforms to the content of the authorizing statute: Allows plumbers to utilize new methods of installation for water supply and distribution.

(d) How the amendment will assist in the effective administration of the statutes: Assists plumbers in using new methods of installations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those businesses that sell the products and the plumbers who utilizes the new method of installation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: The amendment will provide a greater variety of products and materials for Kentucky property owners to chose from and will allow Kentucky property owners to take advantage of the latest plumbing technologies

(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: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:180. Special connections.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: The office [~~department~~] is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation concerns itself with waste other than sanitary wastes. This amendment adds a new method of installation [~~is necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made~~].

Section 1. Commercial Laundry Wastes. Waste from commercial and institutional washing machines and extractors shall not discharge into an open trench, unless the trench is drained into at least a four (4) inch trap, with a full-size vent. The trench shall be constructed of a material resistant to alkaline waste.

Section 2. Semicommercial Laundries (Automatic). Waste from semicommercial laundries shall discharge into a four (4) inch waste line for washing machines only. The waste line shall have a full-size vent and the base of the stack shall be washed by either a washing machine or starch sink. A four (4) inch trap shall be provided in the waste line to serve not more than two (2) washing machines. Floor drains may be placed in the waste line. If they are the pump type, a stand pipe shall be provided to the height of the machine. Each four (4) inch trap shall constitute four (4) fixture units. In no instance shall washing machines discharge into a trench.

Section 3. Washing Machines, Automatic, Residential (New Buildings). When an automatic washing machine is installed in a new building, it shall have a two (2) inch trap and shall be vented in accordance with other sections of this code. The trap shall be installed twelve (12) inches above the floor with a two (2) inch stand pipe extended to the height of the washer. If a washing machine discharges into a private disposal system, fifty (50) feet additional lateral shall be added to the sewage system.

Section 4. Washing Machines, Automatic, Residential (Old Buildings). When an automatic washing machine is installed in an old building, it shall be connected to the house sewer by the use of a four (4) inch cast-iron P-trap, placed on the outside of the building on the opposite side of the wall of the washing machine. The trap shall have a vented cover extending three (3) inches above the grade line. A four (4) inch by two (2) inch tee shall be installed in the inlet side of the trap with a two (2) inch waste pipe extending into the building through the floor to the height of the washing machine. All waste piping shall conform with other sections of this code.

Section 5. Air Conditioning Equipment. (1) Air conditioning

equipment installed with a water supply and waste shall conform with the other sections of this code. No evaporative cooler, air washer, air handling or similar air conditioning equipment shall have any drain pipe in connection therewith directly connected to any soil, waste or vent pipe. The equipment shall be drained by means of indirect waste pipe The indirect waste shall discharge through an air gap or air break into an open floor sink, floor drain, or other approved type receptor which is properly connected to the drainage system, except that an air gap shall be required where the indirect waste pipe may be under vacuum.

(2) The condensate or waste pipe from an air conditioning unit shall be classified as a plumbing fixture only if directly connected to the plumbing system.

Section 6. Garage Sand Trap. A garage sand trap shall be constructed of concrete with a heavy cover or grate. The minimum size shall be two (2) feet by four (4) feet and it shall have sufficient depth so that there is at least a ten (10) inch vertical distance between the bottom of the outlet ell and the bottom of the trap. Sand traps shall be provided with a four (4) inch vent.

Section 7. Inflammable Waste. Liquid waste from buildings using gasoline, benzene, naphtha or other inflammable oils or compounds shall comply with the requirements of the Department for Natural Resources and shall discharge into a separator before it enters a sanitary sewer. The waste line receiving the waste shall be trapped and vented in accordance with other sections of this code. The separator shall be provided with a three (3) inch vent.

Section 8. Hot Water, Steam Blow-offs or Exhaust. Hot water or steam or exhaust blow-offs shall discharge into a tank or basin before entering the house drain or sewer. The tank or basin shall have an airtight cover and be provided with a four (4) inch vent independent of any other venting system.

Section 9. Stable Manure Pits. All liquid waste from barns, stable manure pits and stable yard drains shall discharge through a separator before entering the house sewer.

Section 10. Pedicure Chairs. A two (2) inch open receptacle may receive the discharge from up to two (2) pedicure chairs. Three (3) to six (6) chairs would require a minimum of a three (3) inch open receptacle. A branched tail piece discharge for a pump-type pedicure chair will be allowed only on existing situations and at the discretion of the Division of Plumbing. If the water inlet for a pedicure chair is below the flood level rim or is equipped with a spray hose, it will be treated as a high hazard and require a reduced pressure principle backflow preventer on both the hot and cold supply.

JOHN CLAY
for LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 1 p.m. ET in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: David Reichert, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation concerns itself with waste other than sanitary wastes.

(b) The necessity of this administrative regulation: To add a method of new installation for pedicure chairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to add methods and materials to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows plumbers to utilize the new method of installation for pedicure chairs.

(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: Will add a new section regarding the installation of pedicure chairs.

(b) The necessity of the amendment to this regulation: Pedicure chairs are not currently regulated and this amendment would allow plumbers to install these chairs under the state plumbing code.

(c) How the amendment conforms to the content of the authorizing statute: By allowing a new method of installation for pedicure chairs

(d) How the amendment will assist in the effective administration of the statutes: Includes the new installation for plumbers installing pedicure chairs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those businesses utilizing pedicure chairs and the plumbers that install them.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: None, it will only add a new method of installation.

(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: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Department for Public Health
Division of Adult and Child Health Improvement
(Amendment)

902 KAR 4:030. Newborn screening for inborn errors of metabolism and other inherited disorders known as Newborn Screening Program.

RELATES TO: KRS 214.155

STATUTORY AUTHORITY: KRS 194.050, 211.090, 214.155, ~~[1994 (1st Extra. Sess.) Ky. Acts ch. 2, pt. IX, sec. 24a]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Human Resources is authorized by KRS 214.155 to require that infants be tested for inborn errors of metabolism, and other inherited disorders ~~[such as phenylketonuria (PKU)]~~, and to establish a

schedule of fees to cover the actual costs to the cabinet for the Newborn Screening Program [testing samples for inborn errors of metabolism]. The purpose of this administrative regulation is to require that infants be tested for [phenylketonuria (PKU), galactosemia, sickle cell disease, and hypothyroidism, which are] inborn errors of metabolism or other inherited disorders as specified in KRS 214.155, and to establish the schedule of fees to cover actual costs of the Newborn Screening Program [testing]

Section 1. Tests for inborn errors of metabolism or other inherited disorders for newborn babies as part of newborn screening [be completed as follows:]

(1) Newborn screening shall include the following tests:

(a) 3-methylcrotonyl-CoA carboxylase deficiency (3MCC);

(b) 3-OH 3-CH3 glutaric aciduria (HMG);

(c) Argininosuccinic acidemia (ASA);

(d) Beta-ketothiolase deficiency (BKT);

(e) Biotinidase disorder;

(f) Carnitine uptake defect (CUD);

(g) Citrullinemia (CIT);

(h) Congenital adrenal hyperplasia (CAH);

(i) Congenital hypothyroidism;

(j) Cystic fibrosis (CF);

(k) Galactosemia;

(l) Glutaric acidemia type I (GA I);

(m) Hb S/beta-thalassemia (Hb S/Th);

(n) Hb S/C disease (Hb S/C);

(o) Homocystinuria (HCY);

(p) Isovaleric acidemia (IVA);

(q) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCAD);

(r) Maple syrup urine disease (MSUD);

(s) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);

(t) Methylmalonic acidemia (Cbl A,B);

(u) Methylmalonic acidemia mutase deficiency (MUT);

(v) Multiple carboxylase deficiency (MCD);

(w) Phenylketonuria (PKU);

(x) Propionic acidemia (PA);

(y) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);

(z) Sickle cell disease;

(aa) Trifunctional protein deficiency (TFP);

(bb) Tyrosinemia type I (TYR I); and

(cc) Very long-chain acyl-CoA deficiency (VLCAD).

(2) Except as provided in KRS 214.155(2), the administrative officer, or other person in charge of the hospital or institution caring for newborn infants [twenty-eight (28) days or less of age], and the attending physician or midwife shall [have administered] to; or verify administration of tests to every infant in its care a blood test to detect inborn errors of metabolism or other inherited disorders identified in subsection (1) of this section prior to hospital discharge [phenylketonuria, galactosemia, sickle cell disease, and hypothyroidism]. If a baby is not born in a hospital or institution, the attending physician or midwife shall be [solely] responsible for ensuring that [causing] these tests are [to be] administered between twenty-four (24) and [at no less than] forty-eight (48) hours of age [or more than seven (7) days of life].

(3) [(2)] A capillary blood specimen shall be obtained from an [each] infant at discharge from [before he leaves] the hospital regardless of the age of the infant. Infants discharged prior to twenty-four (24) hours of age shall have a second screen submitted by a primary care physician or hospital prior to forty-eight (48) hours of life. Special circumstances for infants require that a specimen be obtained prior to a blood transfusion even if the specimen has to be drawn prior to twenty-four (24) hours of age. [All infants screened prior to forty-eight (48) hours of life shall be rescreened for phenylketonuria (PKU) and congenital hypothyroidism prior to three (3) weeks of life.]

(4) [(3)] If an infant is transferred from the birth [one (1)] hospital to another during the newborn hospital stay, the following rules shall apply:

(a) The sending hospital shall perform the newborn screening blood test, if the infant is twenty-four (24) [forty-eight (48)] hours of age or more at the time of transfer to another hospital [, testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism shall be the responsibility of the sending hospital].

(b) [It shall be the responsibility of] The receiving hospital shall [to] ensure the newborn screening blood test is performed [testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism] if the infant is less than twenty-four 24 [forty-eight (48)] hours of age at the time of transfer.

(5) Unless the infant has been tested in accordance with subsection (4) of this section, a hospital shall obtain [(4)] a capillary blood specimen at forty-eight (48) hours [shall be obtained on day seven (7)] of life from an infant who is [all infants that are] still hospitalized and ill, premature, or receiving parental feeding [on that day], for the purpose of newborn screening. [for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism, unless the infant has already been tested in accordance with subsection (3) of this section.

(5) A repeat capillary blood specimen shall be obtained from all infants who were being treated with antibiotics when the original specimen was obtained or within the previous five (5) days. This repeat specimen shall be obtained five (5) to seven (7) days after completing the antibiotic treatment for screening for phenylketonuria (PKU) and galactosemia.

(6) A repeat capillary blood specimen shall be obtained for screening for phenylketonuria (PKU) from all infants who received parental feeding prior to the initial screening. The specimen shall be obtained between forty-eight (48) and seventy-two (72) hours after initiation of feedings.]

(6) A hospital shall obtain [(7)] a repeat capillary blood specimen [shall be obtained] from an infant [all infants] who received a transfusion [transfusions] prior to the initial screening, according to the following schedule:

(a) [Forty-eight (48) to] Seventy-two (72) hours after transfusion rescreen inborn errors of metabolism and inherited disorders listed in Section 1(1) of this administrative regulation [for phenylketonuria (PKU) and congenital hypothyroidism].

(b) Sixty (60) [to sixty-five (65)] days after transfusion rescreen for galactosemia.

(c) Ninety (90) [120] days after transfusion rescreen for sickle cell disease.

(7) [(8)] Capillary blood specimens required in subsections (2) [(1)] through (6) of this section shall be obtained by a heel stick. Blood from the heel stick shall be applied directly to filter paper. All circles shall be saturated completely using a drop of blood per circle on a filter paper card. The specimen collector shall provide, on the filter paper card, information requested by the laboratory. If the screen has to be repeated due to lack of information on the filter paper card, the hospital or submitter shall find the newborn and shall be charged for repeating the newborn screening tests.

(8) [(9)] Specimens obtained [as directed] in accordance with subsections (2) [(1)] through (7) of this section, after allowing specimen to air dry for three (3) hours, shall be mailed or sent to the Department for Public Health [approved testing] laboratory within twenty-four (24) hours of collection of the specimen.

(9)(a) [(10)] Hospitals and institutions may submit blood specimens [samples] to the Cabinet for Health and Family Services [Human Resources], Department for Public Health [Services], Division of Laboratory Services, P.O. Box 2010 [100 Sower Boulevard, Suite 204], Frankfort, Kentucky 40602 [40621]. The Department for Public Health [Services], Division of Laboratory Services, shall report positive results of tests for inherited disorders and inborn errors of metabolism as required by KRS 214.155 on behalf of the hospitals and institutions.

(b) Hospitals and institutions may conduct their own testing program, within the institution or through a licensed medical laboratory. The cabinet shall be notified and the laboratory procedures approved. A hospital or licensed medical laboratory may be required by the cabinet to demonstrate its proficiency in the performance of tests.

(c) Hospitals and institutions which conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of testing to the attending physician and shall report positive test results to the Department for Public Health, Newborn Screening Program,

[Services] no later than two (2) working days after the date of testing.

[(11) All hospitals that conduct their own testing for congenital hypothyroidism within the institution or through a licensed medical laboratory shall perform a TSH on the same blood samples whose initial T4 test resulted in a low value level.]

(10) [(12) All] Hospitals, physicians or practitioners which do their own testing or send their blood specimens to a licensed medical laboratory other than the Department for Public Health for testing shall complete monthly [semiannual or other] reports concerning newborn screening results and any other reports as [the testing] requested by the Division of Laboratory Services or the Division of Adult [Maternal] and Child Health Improvement

(11) [(13)] The Cabinet for Health and Family Services shall [Human Resources may] share pertinent test results with specialty referral centers, physicians, [and] practitioners and [other than] the attending physician, who inform the cabinet that they are treating the infant who received the test, and may share with the local health department in the infant's county of residence. These specialty referral centers, physicians, and practitioners shall report results of diagnostic testing to the Department for Public Health. If a repeat screening test result has not been received by the cabinet in accordance with subsection 6 of this section within seven (7) days after notification to the primary care physician, the Department for Public Health shall notify the parents of the necessity for repeat screening.

(12) [(14)] Hospitals or other authorized institutions or individuals submitting blood specimens [samples] to the Cabinet for Health and Family Services [Human Resources] shall be billed a fee of fifty-three (53) dollars and fifty (50) cents for the newborn screening tests. [assessed for each test according to the following schedule:

PKU only	$2.50 per test
Galactosemia only	$2.50 per test
Hypothyroidism	$6.00 per test
Sickle cell disease only	$3.50 per test
Combination test for all four	$14.50]

(13) [(15) All] Fees due the Cabinet for Health and Family Services [Human Resources] shall be collected through a monthly billing system.

(14) In accordance with KRS 214.155, hospitals and freestanding birthing centers that are responsible for the collection of specimens for newborn screening shall:

(a) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance;

(b) Notify the Department for Public Health of the name of the individuals designated in subsection (a) of this section on a yearly basis and whenever the designated individual changes;

(c) Develop a written protocol for tracking newborn screening compliance. The protocol shall include a requirement that the name of the physician attending the infant after birth or a designee be placed on the filter paper specimen card sent with the initial specimen to the Department for Public Health laboratory; and

(d) Provide to parents educational materials developed by the Department for Public Health regarding newborn screening and made accessible on the Department for Public Health Web site.

WILLIAM J. HACKER, M.D. FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Fawbush

(1) Provide a brief summary of.

(a) What this administrative regulation does. This administrative regulation authorizes the cabinet to require infants to have a newborn screening blood test for 28 disorders and establishes a fee to cover the actual cost to the cabinet for the Newborn Screening Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement SB 24 which authorizes and funds the expansion of the newborn screening blood test program from the current 4 disorders to the 28 disorders to begin July 1, 2005.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 214.155 authorizes the cabinet to promulgate administrative regulations for operating a Newborn Screening Program for heritable disorders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary guidelines for the Newborn Screening Program by prescribing the time and manner of obtaining a specimen, reporting of results, and establishment of a fee.

(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 establishes new guidelines for specimen collection, new fees, and establishes a parent education component to the Newborn Screening Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish new testing procedures for an expanded number of conditions, as well as establishment of fees to support the program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the times and manner of obtaining specimen, prescribes the manner of testing the specimen, reporting the results, and increases the current fee of $14.50 to $53.50 to support the Newborn Screening Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing an increased fee to support expanding the program from the current 4 disorders to 28 disorders and assures that screening of all newborns occurs in a timely fashion.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the Department for Public Health, university specialty clinics, birthing hospitals, primary care physicians, midwives, submitters of initial newborn screening tests, and parents.

(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 as follows:

(a) The Department for Public Health will have an increase in the number of infants requiring case management for short term follow-up and/or referrals to the universities;

(b) University specialty clinics will see an increase in referrals made to them for diagnosis and long-term treatment of the disor-

ders detected;

(c) Birthing hospitals will have a newborn screening coordinator; and a protocol for assuring all newborns in their care receive a screening tests;

(d) Primary care physicians and midwives caring for newborns will be responsible for assuring newborn screening blood test performed,

(e) Submitters of initial newborn screening tests will see an increase in the fee charged;

(f) Parents will receive education materials regarding the newborn screening tests that are performed.

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

(a) Initially. 3.2 million

(b) On a continuing basis: 2 2 million

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds resulting from charging a fee to submitters for the newborn screening blood tests. Additionally in the first year master tobacco settlement funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will need to be an increase in the fee charged for the newborn screening blood test from $14.50 to $53.50

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation increases the fee charged for newborn screening blood testing.

(9) Tiering: Is tiering applied? Tiering of the fee increase will be not be applied with this administrative regulation, because the administrative regulation applies to all newborn infants across the state and applies equally to all entities across the state regulated by it. The fee increase will be $53.50 to purchase new equipment and reagents, train the hospital staff, and provide subspecialty consultations at the academic medical centers when potential cases are identified as the lab progressively expands the testing panel to 28 disorders.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect local government. The local health departments will have an increase in the fee charged for initial newborn screening tests performed.

3. State the aspect or service of local government to which this administrative regulation relates. Local Health Departments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): minimal

Expenditures (+/-): minimal: There is minimal anticipated impact upon the revenues of local government due to the implementation of this administrative regulation. There will be few initial newborn screening tests performed in the local health departments. Only the infants born at home would possibly utilize local health department services. For calendar year 2004 there were 263 planned home deliveries.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amendment)

902 KAR 4:035. Cost reimbursement for special food products [~~for the uninsured~~].

RELATES TO: KRS 205.560(1)(c), 213.141(2), 214.155(1), 304.17A-139, 7 C.F.R. Part 246, 42 U.S.C. 1786

STATUTORY AUTHORITY: KRS 194A.050(1), 205.560(1)(c), 214.155(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155(1) requires the cabinet to establish and collect fees to cover the cost of analyzing testing samples for inborn metabolic errors. KRS 213.141(2) requires the cabinet to prescribe a fee for a copy of a birth record, one (1) dollar of which shall be used by the Division of Adult [Maternal] and Child Health Improvement to pay for amino acid modified preparations and low-protein modified food products for the treatment of genetic and [~~inherited~~] metabolic diseases. This administrative regulation establishes the application and cost reimbursement procedures.

Section 1. Definition. (1) "Amino acid modified preparation" is defined at KRS 304.17A-139(4)(a)1.

(2) "Low protein modified food" is defined at KRS 304.17A-139(4)(a)2.

(3) "Patient" means a person with one (1) or more of the metabolic conditions listed in KRS 205.560 or 214 155.

(4) "Provider" means an individual or entity authorized to fill a prescription for an amino acid modified preparation or low protein modified food product.

(5) "Uninsured patient" means one who does not meet the criteria to receive Medicaid, K-CHIP, [~~or~~] WIC benefits, or [~~and~~] whose insurance coverage is exhausted.

(6) "WIC" means the Special Nutrition Program for Women, Infants, and Children administered pursuant to 42 U.S C. 1786 and 7 C.F.R. Part 246

Section 2. Eligibility. (1) The cost of the formula for a patient who is eligible for WIC shall be covered by the WIC Program.

(2) The cost for food and formula for a patient covered by private health insurance shall be paid under the terms of the individual insurance policy, which shall meet or exceed the limit established in KRS 304.17A-139.

(3) An uninsured patient may qualify for financial assistance by submitting the following information and completed forms annually, [~~incorporated by reference,~~] to the Department for Public Health, Division of Adult and Child Health Improvement, 275 East Main Street HS 2GW-A, Frankfort, Kentucky 40621:

(a) Kentucky Metabolic Disease Program Physician's Statement of Medical Necessity - Metabolic Disease Therapy form;

(b) Kentucky Metabolic Food and Formula Provision Financial and Release of Information Form; and

(c) Written verification that application for WIC, Medicaid, or K-CHIP was denied, and that private health insurance has been exhausted.

Section 3. Cost Reimbursement. To receive reimbursement of the actual cost plus twenty (20) percent, a provider shall submit the following documents to the Department for Public Health, Division of Adult and Child Health Improvement:

(1) A prescription for the metabolic food and formula from a licensed or certified healthcare practitioner with prescriptive authority; [~~and~~]

(2) A completed Division of Adult and Child Health, Authorization for Services, Form ACH 233; and

(3) An invoice from the supplier with the service date, patient name, and cost to the provider. [~~, incorporated by reference.~~]

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

(a) "Kentucky Metabolic Disease Program Physician's Statement of Medical Necessity - Metabolic Disease Therapy, 5/2001";

(b) "Division of Adult and Child Health Authorization for Services, Form ACH 233, 10/00 [6/2001]"; and

(c) "Kentucky Metabolic Food and Formula Provision Financial and Release of Information Form, 12/2004 [6/2001]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Adult and Child Health Improvement, 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
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 15, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Fawbush or Troi Cunningham

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the disorders that require special medical food or formula and the guidelines for the Department for Public Health to reimburse for these conditions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow coverage of metabolic food products or formula as part of treatment for genetic and metabolic disorders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 214.155 authorizes the cabinet to promulgate administrative regulations for operating a newborn screening program for heritable disorders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary guidelines for reimbursement of metabolic formula or medical food products by the Newborn Screening Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation only by adding the expanded disorders to the list of disorders that require special medical food or formula and modifies reimbursement guidelines for the Department for Public Health to reimburse for these conditions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand the list of disorders covered by this reimbursement as mandated by 2005 GA SB 24.

(c) How the amendment conforms to the content of the authorizing statutes. This amendment conforms to the authorizing statute by expanding the disorders reimbursable by the Department for Public Health's Newborn Screening Program

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for coverage of the additional disorders that will be identified through the expanded newborn screening.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the Department for Public Health, university specialty clinics, patients, durable medical equipment providers, and pharmacy providers.

(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 as follows:

(a) The Department for Public Health may have an increase in the number of uninsured patients that are prescribed medical food products or formula.

(b) University specialty clinics may have an increase in the number of uninsured patients that require assistance in completing forms for the Department for Public Health to reimburse providers for medical food products and formula.

(c) Durable medical equipment and pharmacy providers will provide reimbursement guidelines for the disorders identified through newborn screening.

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

(a) Initially: Budget neutral.

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementing this administrative regulation is the $1 fee that is charged with the birth certificate fee to be used for medical food products and formula.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish nor indirectly increases the fee charged for the birth certificate.

(9) Tiering: Is tiering applied? Tiering of the fee increase will be not be applied with this administrative regulation, because the administrative regulation applies to all newborn infants across the state and applies equally to all entities across the state regulated by it.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:060. Classification and compensation plans for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes the classification and compensation plans for local health departments.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall establish for each class of positions:

(a) A title;
(b) A description of the duties and responsibilities;
(c) The minimum requirements of training and experience; and
(d) Other qualifications necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and shall be used to allocate positions as determined by their respective duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority of an appointing authority to change the duties and responsibilities of similar kind or quality, or to assign duties of similar kind or quality to an employee.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate a newly established position to a class upon receipt of a statement, from the appointing authority, of duties, responsibilities, and requirements of the position.

(7) The department shall:

(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Periodically [~~Conduct a general~~] review [~~of~~] the classification plan, revise existing classifications, or add classification [~~at least annually~~], based on the review of job descriptions and other information provided by the agencies.

(8) An agency shall change the classification of an existing position through a reclassification if:

(a) A material and permanent change in the duties and responsibilities of a position occurs; [~~and~~]

(b) The change in the duties and responsibilities are characteristic of a different classification; [~~.~~]

(c) [~~(a)~~] The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified; and [~~.~~]

(d) [~~(b)~~] A reclassification shall not be permitted during the initial employment probationary period.

(9) The department shall change the allocation of an existing position if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(10) The department shall:

(a) Maintain a master set of approved class specifications; and

(b) Provide each appointing authority with a copy of the master set of class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

(a) Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;

(b) Financial condition of the agency;

(c) Experience in recruiting for a position;

(d) Prevailing rates of pay for services of similar kind and quality;

(e) Benefits received by employees; and

(f) Consistency in application among local health departments.

(2) The compensation plan shall:

(a) Include minimum, midpoint [~~intermediate~~], and maximum rates of pay for the various classes within the classification plan; and

(b) Be used to determine:

1. A salary adjustment provided for under this administrative regulation; and

2. The circumstances under which a salary adjustment may exceed the maximum.

(3) The department shall periodically [~~annually~~] review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. An amendment shall include:

(a) A change in the minimum, midpoint, and maximum salary level for a respective classification of the classification plan; and

(b) The manner in which a salary adjustment shall be granted.

Section 3. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department.

(2) A new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary to attract qualified applicants.

(3) If an appointment is made at the newly established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(4) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly-established minimum. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(5) An appointment of an applicant who meets the minimum requirements for a position may be made within the salary range applicable to the class if:

(a) The newly-appointed employee has previous, relevant experience above the minimum requirements of the job;

(b) It is necessary to attract qualified applicants; and

(c) The newly-appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(6) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly-appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted for the newly-appointed employee, shall have their salary adjusted to the approved entrance salary level.

Section 4. Initial Probationary Salary Adjustment. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period of thirteen (13) pay periods. The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3(3), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 5. Salary Adjustment Due to a Change in Position Duties and Responsibilities. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent, if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

Section 6. Salary Adjustment Due to a Position Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency, based on an evaluation of a position, may request a reclassification to a different position:

(a) Within the same classification series that has more complex

nonsupervisory job duties and responsibilities and has a higher grade level;

(b) That has supervisory responsibilities and a higher grade level; or

(c) In a different classification series that has the same or higher grade level.

(3) An employee that occupies the position to be reclassified shall:

(a) Meet the minimum requirements of the new classification;

(b) Not have previously performed the job duties of the new classification; and

(c) Serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.

(4) An employee that is reclassified to a position having a higher pay grade shall receive a salary increase that is the higher of:

(a) Five (5) percent of the employee's current salary;

(b) Three (3) percent for each grade increase to the new position; or

(c) The minimum salary of the grade assigned to new position.

Section 7. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary and more extensive and complex job duties and responsibilities as determined by the department.

(2) The employee, who is advanced to a higher pay grade through a promotion, shall receive a salary increase that is the higher of:

(a) Five (5) percent; or

(b) Three (3) percent for each grade increase to the new position; or

(c) The minimum salary of the new position.

(3) The employee shall serve a promotional probationary period of thirteen (13) pay periods and shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation.

Section 8. Demotion. (1) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) If an employee requests a voluntary demotion, the employee's salary shall be reduced by five (5) percent; and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to position that no longer requires supervisory responsibilities; or

(c) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(2) The salary of an employee, who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position, shall be reduced to the lesser of ten (10) percent or to the minimum of the new grade.

Section 9. Salary Upon Reinstatement of Former Employee. (1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be:

(a) At a salary level offered by the appointing authority if not above the salary the employee made at the time of separation;

(b) At the same pay rate the employee had been paid at the termination of service if the time period between separation and reinstatement does not exceed three (3) years; or

(c) At a higher salary rate if justified on the basis of:

1. Additional qualifications that have been obtained by the employee since separation from the agency;

2. Established minimum entrance salary above the former salary; or

3. Compensation plan changes.

Section 10. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour or part time employee an outstanding meritorious lump sum payment.

(2) The appointing authority may grant a lump sum payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

(b) The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

(c) The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in subsection (3) of this section for the lump sum payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum payments granted during the fiscal year that exceed $2,000.

Section 11. Responsibility Pay or Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) Is assigned by the appointing authority to undertake a special project in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the former classification or resume normal duties with the employee's salary reduced by the salary rate increase received for the detail assignment. An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 12. Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay recognizes and rewards employees who take the initiative through their own efforts to increase job worth and significantly enhance their value to the agency by achieving a higher level of performance through a prescribed course of study in their job field.

(2) An agency may elect not to participate in the educational achievement program and advise the department in writing, if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for completing a high school diploma, high school equivalency certificate, or a passing score on the GED test if the employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

(a) Outside of work hours;

(b) While in the employment of the agency;

(c) The employee has not previously attained a high school diploma, equivalency certificate or passing score on the GED test; and

(d) The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if;

(a) The employee has completed 260 hours of job-related instruction, or the equivalent, as determined by the department;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it, and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the Department, an employee a lump sum payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and is identified as an approved program by the department with the advice of the council and agencies.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section 13. Other Salary Adjustments. (1) An agency may submit a request to the Department substantiating the need for a specific salary adjustment to address:

(a) Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;

(b) Special working conditions;

(c) After hours adjustment if working hours cannot be adjusted;

(d) Internal or external equity issues among individual employees or groups of employees; or

(e) Other specific circumstances.

(3) The request shall address:

(a) The nature of the salary problem;

(b) The consequences of the salary issue;

(c) Recommendation of a equitable resolution; and

(d) Other pertinent information substantiating the need for the salary adjustment.

(4) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(5) An agency may grant a one (1) time salary adjustment for all employees during the fiscal year to:

(a) Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or

(b) Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(6) The salary adjustment shall be a prescribed amount given to an employee determined by:

(a) Applying an amount not to exceed five (5) percent to the employee's grade minimum;

(b) Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or

(c) Specifying a fixed hourly amount that would be provided to an employee. [~~(4) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department.~~

~~(5) A new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. An appointment to the position may be made within the new salary range applicable to the class. If an appointment is made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.~~

~~(6) The department may approve a higher entrance salary for a new employee entering a professional, technical, or clerical position if the individual possesses qualifications in training and experience that exceed the minimum required for the class as follows:~~

~~(a) Two (2) percent salary adjustment, not to exceed the midpoint, for each year of experience and appropriate education or training in excess of the minimum requirements for the respective classification, or~~

~~(b) Other qualifications established by the department with the advice of the council and local health departments.~~

~~(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted for the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.~~

~~(8) If a former employee is reinstated or reemployed in a class for which he was previously employed, and the employee is not receiving retirement benefits from the Kentucky Employee Retirement System or the Teachers Retirement System, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:~~

~~(a) Additional qualifications acquired by the employee;~~

~~(b) Established minimum entrance salary above the former salary; or~~

~~(c) Compensation plan changes.~~]

[~~Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. Except as provided for in 902 KAR 8:080, Section 3(3), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.~~

~~(2) The agency may, at the beginning of each fiscal year, establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible. Consideration shall be based on documented satisfactory job performance.~~

~~(a) The salary adjustment shall be given to each full time and designated part time 100 hour employee at the beginning of the first pay period following twenty six (26) pay periods of service during which the employee earned annual and sick leave provided by 902 KAR 8:120 since the established anniversary date. An employee designated as part time shall receive the salary adjustment after twenty six (26) pay periods of service.~~

~~(b) An outstanding meritorious lump sum payment shall not be approved if an agency does not grant an annual increment.~~

~~(3) An appointing authority may deny an annual increment to an employee for the following reasons;~~

~~(a) Documented unsatisfactory work performance;~~

~~(b) Excessive absenteeism;~~

~~(c) Excessive tardiness;~~

~~(d) Record of disciplinary action; or~~

~~(e) Failure to cooperate.~~

~~(4) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.~~

~~(5) An employee's established anniversary date shall be the first day of the first pay period upon completion of twenty six (26) pay periods of service during which the employee earned annual and sick leave provided by 902 KAR 8:120 after initial employment. A designated part time employee's established anniversary date shall be the first day of the first pay period upon completion of twenty six (26) pay periods of service.~~

~~(6) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:~~

~~(a) Five (5) percent; or~~

(b) The minimum salary assigned to the reclassified position, if the employee's salary is below the minimum of the new grade.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) An annual increment date shall not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave; or

(g) Is reclassified, or

(h) Is promoted.

(9) The appointing authority, with the approval of the department, may award any regular, full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year period consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period. There shall be at least a thirteen (13) week pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position, either through a compensation plan change or the establishment of a new minimum entry salary for a classification, persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum entry salary of the new range.

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence. An employee may assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment. An employee shall be entitled to salary increases he would have received had he not been on special assignment.

(13) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) The department may approve other salary adjustments with the advice of the Local Health Department Employment Personnel Council and local health departments. A salary adjustment may address special working conditions, after hours adjustment where working hours cannot be adjusted, or other specific circumstances.

(15) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(16) An agency may grant a one (1) time salary adjustment for all employees during the fiscal year. The salary adjustment shall not exceed five (5) percent.

Section 4. Educational Achievement Award. (1) An appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement, as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) The appointing authority shall certify that the qualifying conditions established in this subsection for the appropriate type of educational achievement award have been met.

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours; and

b. While in the employment of the agency;

2. The employee has not previously attained a high school diploma, equivalency certificate or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction, or the equivalent, as determined by the department;

2. The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it began;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it; and

6. The employee was not on educational or extended sick leave when the courses were taken.]

JAMES W. HOLSINGER, M.D., Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert L. Nelson (502) 564-3796

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the classification and compensation

plans for the local health department of Kentucky The classification plan describes the various classifications that used to describe the various jobs, responsibility level, and duties that are performed be employees of the local health departments. To compliment the classification plan, the compensation plan describes the grades and salary ranges that are assigned to the various positions of the classification plan. The administrative regulation also provides for salary adjustments that an eligible employee may receive that include; changes in job duties, moving to a different position through a promotion, probationary increase, reclassification of a position, annual increment, or a reward for outstanding performance

(b) The necessity of this administrative regulation: Kentucky revised statutes authonze the Cabinet for Health and Family Services to promulgate administrative regulations governing a personnel program for local health department in Kentucky This administrative regulation is necessary to establish consistent guidelines in salary administration and equitable pay practices for similar job duties across the local health departments This administrative regulation would apply to all local health departments except Lexington-Fayette County, Northern Kentucky Independent District Health Department and the Louisville-Jefferson County Health Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211:1755 (1) states that the cabinet shall administer a personnel program for local health departments based on the principles of ment governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies. KRS 211:1755(3)(a), (b) and (c) describe the provisions and factors that comprise the contents of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation provides consistent standards for job classifications and various salary adjustments that are submitted for review and approval by the cabinet.

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

(a) How the amendment will change this existing administrative regulation: The primary amendment is being made to the types of salary adjustments employees are eligible for if requested by an agency. The salary adjustment for a reclassification and promotion are the same to reflect the changing duties and responsibilities of employees. All salary adjustments have been merged in the amendments from other local personnel administrative regulations under 902 KAR Chapter 8. The amount granted an employee for outstanding meritorious performance has been reduced to an amount that would not exceed 8% of the minimum salary of the grade of the employee. A new provision has been added that would allow an employee to receive a lump sum payment not to exceed 3% of the employee's salary for completing a course of study that improves job knowledge and competency.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to provide additional incentives to employees for the increasing complexity of the various jobs in the local health departments.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides consistent standards for job classifications and various salary adjustments that are submitted for review and approval by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide consistent standards for job classifications and various salary adjustments that are submitted for review and approval by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All local health departments except for the Northern Kentucky Independent District health Department, Lexington-Fayette County Health Department, and the Louisville-Jefferson County Health Department 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: The primary impact on the local health departments will be in the salary amounts that are applied to reclassification, lump sum payments for meritorious performance, and other salary adjustments. The amount provided by a reclassification may increase while other salary adjustments have decreased.

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

(a) Initially. There will be a slight cost to the cabinet to accommodate programming changes to the automated personnel system.

(b) On a continuing basis: There are no continuing costs that can be identified.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no additional cost to the cabinet to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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: This administrative regulation will not establish or increase any fees

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency he "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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administration regulation will affect each local health department excluding Louisville Metro, Lexington-Fayette, and the Northern Kentucky Independent District Health Department

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation will define the compensation and salary adjustments for the employees of the local health departments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-)

Other Explanation: The application of the compensation and salary adjustments defined in this administrative regulation would be a local health department decision and controlled by the existing budget of each local health department.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:070. Recruitment, examination, and certification of <u>eligible applicants</u> ~~[eligibles]~~ for local health departments.

RELATES TO. KRS 211.170(1), (2), 211.1751, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 require the cabinet to approve the appointment and duties of district and local health officers. KRS 211.1755(1) requires the cabinet to administer a personnel program for local

health departments. This administrative regulation provides for a recruitment plan and establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Announcement of a Vacant Position. (1) An agency, prior to announcing a specific vacancy, shall determine whether to recruit for a vacant position on a scheduled basis or on a continuous basis for positions that are difficult to attract qualified applicants.

(2) Except as provided by 902 KAR 8:090, Section 1, an agency desiring to fill a vacant position shall announce the vacant position in the following manner:

(a) Provide notice of the vacant position within the agency in a manner that affords the ability of current employees to know of the vacancy and procedures for submitting an application;

(b) Provide notice of the vacant position through recruitment resources that are external to the agency; or

(c) A combination of paragraphs (a) and (b) of this subparagraph.

(3) An announcement shall contain the following information:

(a) The conditions under which an application for potential employment shall be received;

(b) The assessment method utilized to select the individual;

(c) The title and minimum salary of the class of position;

(d) The rates of pay at which appointments are expected to be made;

(e) A general statement of the duties to be performed;

(f) The minimum qualifications of education, training, and experience required as stated in the classification plan;

(g) The date, if required, on which an application is to be received in the agency;

(h) Veteran's preference, if applicable;

(i) All other conditions of competition, including the fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and

(j) If an agency requires pre-employment drug testing, criminal records information, physical examination, or other special conditions they shall be required upon an offer of employment.

(4) Based on the type of position to be filled, the notice of the recruitment effort shall be distributed to one (1) or more of the following:

(a) Public officials;

(b) Employment service offices;

(c) Newspapers;

(d) Educational institutions;

(e) Professional and vocational societies; or

(f) Other media, individuals, and organizations, as necessary.

Section 2. Application for Employment Submittal and Review Process. (1) The department shall be the custodian of applications.

(2) An application for employment, form CH-36, shall be required of an individual seeking employment with an agency.

Section 3. Review of Applications by the Department. (1) The department shall review and determine the eligibility of an applicant for a position announced by an agency.

(2) The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify an eligible on a register, or may consult with the appointing authority in taking steps to remove a person already appointed, if the applicant, eligible, or appointee:

(a) Lacks a specific requirement established for the assessment for the class or position;

(b) Is unable to perform duties of the class;

(c) Except as provided for in subsection (3) of this section, has been convicted of a felony or misdemeanor;

(d) Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;

(e) Made a false statement or misrepresentation in the application;

(f) Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;

(g) Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;

(h) Has failed to submit a complete application;

(i) Has failed to submit the application within the time limits prescribed by the agency in the published announcement;

(j) Has taken part in the compilation or administration of the interview process; or

(k) Has otherwise failed to meet the provisions of this administrative regulation.

(3) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determine that:

(a) The applicant is highly qualified and eligible for appointment,

(b) The misdemeanor conviction will not adversely affect the applicant's job performance;

(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and

(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.

(4) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 4. Establishment of Registers of Eligible Applicants. (1) An agency may announce a position on a continuous basis for a position that is difficult to recruit for and fill.

(2) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(3) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

(4) A register may be deemed to be exhausted by the department if fewer than three (3) eligible applicants remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(5) The department may remove the name of an eligible from a register:

(a) For a disqualifying cause stipulated in Section 1 of this administrative regulation;

(b) If the eligible applicant cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) If the eligible receives a probationary appointment;

(f) If he declines an offer of appointment for which the eligible previously indicated acceptance;

(g) If the eligible fails to report for a scheduled interview without valid reason;

(h) If an eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) If an eligible has been certified three (3) times to an appointing authority and has not been offered employment.

(6) An eligible that is appointed on a probationary basis shall be removed from all applicable registers. The eligible may request in writing to the department requesting that his name be reinstated to the applicable register before its expiration. The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.

Section 5. Issuance of Certification of Eligible Applicants. (1) The department shall issue a certification of eligible applicants to an agency in the following manner:

(a) A promotional certification of eligible applicants that responded to an announcement provided within an agency;

(b) A regular certification of eligible applicants that responded to an announcement provided to recruitment resources external to the agency; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(2) The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(3) The life of a certification of eligible applicants during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligible applicants.

(4) A regular status employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off.

(5) A regular status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(6) If a laid-off regular status employee desires reemployment in a different job classification, the employee shall meet the minimum requirements of the classification.

(7) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 6. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position as well as general background and related knowledge. An assessment method may be:

(a) A personal interview;

(b) Physical examination;

(c) An evaluation of experience and training,

(d) A demonstration of skill; or

(e) Any combination of types, so long as an applicant for a position is given the same assessment method.

(2) An agency may form an interview committee to evaluate an eligible applicant through a structured interview process.

(3) The interview committee shall structure questions to assess the knowledge, skills, abilities, and the education and work experience of the applicants chosen to be interviewed.

(4) The interview questions, criteria for selecting applicants to be interviewed, profiles of interviewed applicants, and results of the interview process shall be maintained by the agency for a period of sixteen (16) months after an applicant has been appointed to the vacant position. [~~Recruitment of Eligible Individuals. (1) The department, with the advice of the council and the local health departments, shall establish a program which shall provide for the recruitment needs of the various agencies.~~

~~(2) The recruitment plan shall specify the following:~~

~~(a) The conditions under which an application for potential employment will be received;~~

~~(b) The assessment method utilized to select the individual who:~~

~~1. Meets the minimum requirements of education and experience; and~~

~~2. Possesses the knowledge, skill, and ability to perform the job responsibilities;~~

~~(c) The requirements for announcing a vacant position, which shall include the following:~~

~~1. The title and minimum salary of the class of position;~~

~~2. The rates of pay at which appointments are expected to be made;~~

~~3. A general statement of the duties to be performed;~~

~~4. The minimum qualifications of education, training, and experience required;~~

~~5. The date, if required, on which an application is to be received in the agency;~~

~~6. Veteran's preference;~~

~~7. The date, time and place of a written and scored examination for the position, if required; and~~

~~8. All other conditions of competition, including that fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and~~

~~9. If an agency requires preemployment drug testing, criminal records information, physical examination, or other special conditions shall be required upon an offer of employment.~~

~~(3) An agency shall determine whether to fill a particular vacancy by open or promotional examination, transfer, or reinstatement, from the classified service or to establish a register for a class of position where vacancies are likely to occur by making public an announcement of the recruitment effort to attract qualified persons to fill a position. Based on the type of position to be filled, the notice of the recruitment effort shall be distributed to one (1) or more of the following:~~

~~(a) Public officials;~~

~~(b) Employment service offices;~~

~~(c) Newspapers;~~

~~(d) Educational institutions;~~

~~(e) Professional and vocational societies, and~~

~~(f) Other media, individuals, and organizations, as necessary.~~

~~(4) The department shall be the custodian of all applications.~~

~~(5) An application for employment, form CH-36, shall be required of an individual seeking employment with an agency.~~

~~(6) The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify an eligible on a register, or may consult with the appointing authority in taking steps to remove a person already appointed, if the applicant, eligible, or appointee:~~

~~(a) Lacks a specific requirement established for the examination for the class or position;~~

~~(b) Is unable to perform duties of the class;~~

~~(c) Except as provided for in subsection (7) of this section, has been convicted of a felony;~~

~~(d) Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;~~

~~(e) Made a false statement in the application;~~

~~(f) Has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;~~

~~(g) Has directly or indirectly obtained information regarding examinations, to which the applicant was not entitled;~~

~~(h) Has failed to submit a complete application;~~

~~(i) Has failed to submit the application within the time limits prescribed by the agency in the published announcement;~~

~~(j) Has taken part in the compilation, administration, or correction of the examination; or~~

~~(k) Has otherwise failed to meet the provisions of this administrative regulation.~~

~~(7) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determine that:~~

~~(a) The applicant is highly qualified and eligible for appointment;~~

~~(b) The misdemeanor conviction will not adversely affect the applicant's job performance;~~

~~(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and~~

~~(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.~~

~~(8) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.~~

~~Section 2. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position as well as general background and related knowledge. An assessment method may be a written scored examination, oral scored examination, personal interview, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as each applicant for a position is given the same assessment method.~~

~~(2) The recruitment plan required by this administrative regulation shall identify the assessment method for each job classification.~~

~~(3) The department, in conjunction with an agency, may designate monitors as necessary to conduct written scored examinations requiring test scores, and may arrange for the use of public build-~~

~~ings in which to conduct the written examinations. The department shall provide for the compensation of monitors.~~

~~(4) If an oral examination is a part of a total examination for a position, the department may appoint one (1) or more impartial oral examination boards as needed.~~

~~(5) The department shall notify each applicant by mail of the final rating of the examination requiring test scores as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.~~

~~Section 3. Establishment of Registers of Eligibles. (1) For continuous recruitment job classifications, the department shall establish and maintain registers as follows:~~

~~(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or~~

~~(b) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved.~~

~~(2) For a job classification that requires special announcement, as determined by the agency, the department shall establish and maintain registers as follows:~~

~~(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or~~

~~(b) If a job classification requires an applicant to meet the minimum qualifications and requires a scored examination, an individual achieving a score of seventy (70) or above shall remain on the register for a period of one (1) year from the date on which the examination was given.~~

~~(3) The names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any, or in order of the date of receipt of application. If applications of eligibles have ratings which are identical and are received on the same day, the names shall be placed on the certification in alphabetical order.~~

~~(4) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.~~

~~(5) A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.~~

~~(6) The department may remove the name of an eligible from a register:~~

~~(a) For a disqualifying cause stipulated in Section 1 of this administrative regulation;~~

~~(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";~~

~~(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;~~

~~(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;~~

~~(e) An eligible receives a probationary appointment;~~

~~(f) Declines an offer of appointment for which the eligible previously indicated acceptance;~~

~~(g) The eligible fails to report for a scheduled interview without valid reason;~~

~~(h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or~~

~~(i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.~~

~~(7) An eligible who is appointed on a probationary basis shall be removed from all applicable registers. The eligible may request in writing to the department requesting that his name be reinstated to the applicable register at any time before its expiration.~~

~~(8) The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.~~

~~Section 4. Issuance of Certification of Eligibles. (1) For positions requiring an examination requiring test scores and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons.~~

~~(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.~~

~~(b) If there are fewer than the number of eligibles specified in this section, the available number shall be certified and appointment will be made if there are as many as three (3) available eligibles for each vacancy.~~

~~(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).~~

~~(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.~~

~~(2) For a position which does not require an examination, the department shall certify all names of eligibles to the appointing authority.~~

~~(3) The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.~~

~~(4) The life of a certification of eligibles during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligibles.~~

~~(5) A regular employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off.~~

~~(a) A regular employee in the layoff category shall indicate in writing to the department that he desires reemployment.~~

~~(b) An examination shall not be required for reemployment in the same job classification from which the employee was laid off.~~

~~(c) If a laid-off regular employee desires reemployment in a different job classification, the employee shall meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.~~

~~(d) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.]~~

Section 7. ~~[5.]~~ Incorporation by Reference. (1) "Form CH-36 Application for Employment", 5/1/2005 ~~[1/2004]~~ Edition), Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management ~~[Local Health Operations]~~, 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
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main

Street, Frankfort, Kentucky Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert L. Nelson (502) 564-3796

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the recruitment policies applicable to local health departments. The policies address the requirement for announcing vacant positions, the contents of the announcement, reasons for disqualification of an applicant, and the placement of a qualified applicant on a certification of eligible applicants.

(b) The necessity of this administrative regulation: The Cabinet for Health services is responsible for supervising the personnel functions of local health departments in Kentucky, except for the Lexington-Fayette County, the Louisville-Jefferson County, and the Northern Kentucky District Health Department. KRS 211.1755 allows the department to promulgate administrative regulations addressing policies for the local health department personnel program. This administrative regulation establishes consistent requirements for recruitment and the assessment of applicant for the positions available through local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet, in accordance with KRS 211.1755, is responsible for administering a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The current administrative regulation and amendments establish a consistent recruitment program for local health department to attract a pool of qualified applicant to make an objective employment decision.

(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 adds the provision that a local health department may announce a vacant position internally, externally, or a combination of both internal and external. References to a scored examination have been removed as an assessment method. An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position as well as general background and related knowledge. An assessment method may be a personal interview, physical examination, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as each applicant for a position is given the same assessment method.

(b) The necessity of the amendment to this administrative regulation: The amendments remove references to scored examinations as a method of assessing an applicant due to the desire not to have scored examinations. Also the amendments change the recruitment process to include internal announcements of a vacant position.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments provide a mechanism of establishing consistent policies applicable to the personnel programs.

(d) How the amendment will assist in the effective administration of the statutes. The amendments provide for a consistent recruitment process for both the internal and external means of attracting qualified applicants for various vacant positions.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administration regulation would affect all local health departments, except the Lexington-Fayette County, the Louisville-Jefferson County, and the Northern Kentucky District Health Departments.

(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 local health departments would not be impacted by the amendment as this amendment is a procedural change.

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

(a) Initially: There is no cost to implement this administrative regulation amendment.

(b) On a continuing basis: There are no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There would be no costs incurred by a health department

(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 indicated.

(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 effect 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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administration regulation will affect each local health department excluding Louisville Metro, Lexington-Fayette, and the Northern Kentucky Independent District Health Department

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulations defines the recruitment and hiring process of new employees of each local health department.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-)

Other Explanation: There would be no significant affect on the expenditures and revenues of the local health department.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211 170(1), (2), 212.170(4), 212 870
STATUTORY AUTHORITY: KRS 194A 050(1), 211.1755(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administratve regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments and [,] employment probationary periods, and the employee evaluation process.

Section 1. Initial Appointments. (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant [~~only~~] from a certification of eligible applicants [~~eligibles~~] issued by the department.

(2) The reemployment of a person shall be an initial appointment if the person:

(a) Was formerly employed by an agency; and

(b) Is receiving retirement benefits from the:

1. Kentucky Employee Retirement System; or

2. Kentucky Teachers Retirement System.

(c) Has resigned from an agency at least one (1) year prior to appointment and the period of separation does not exceed three (3) years.

Section 2. Provisional Appointments. (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not:

(a) Be made until the position has been classified and minimum qualifications established for the class of position; and

(b)[~~. The provisional appointment shall not~~] Exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to initial appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency [~~without examination~~], with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee has had a break in service of not more than twelve (12) months. The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency shall [~~may~~] be used to determine the rate at which the employee earns annual leave.

(3) If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance. If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated [~~upon employment~~] and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(4) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, the department may issue a certification of eligible applicants [~~eligibles~~] who have indicated a willingness to accept temporary employment, in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible applicant's [~~eligible's~~] standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature;

(b) Work study or job training programs;

(c) Special projects; or

(d) Summer employment.

(2) An applicant shall not be appointed to a seasonal position unless the applicant meets established minimum requirements.

(3) Continuous [~~Successive~~] appointments to the same seasonal position shall not be made.

Section 7. Appointment of an Individual to a Variable Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

(2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and experience established for the position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate, as determined by the agency.

(4) The hours of work of the individual shall not exceed 400 hours per year.

(5) An individual appointed to the variable hour position shall not be considered in the classified service and continued employment shall be subject to the discretion of the appointing authority.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with applicable administrative regulations.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 8 Partial-year Appointment. (1) An agency may establish a partial-year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.

(2) A partial year position shall contain regularly-scheduled periods, not to exceed seven (7) day periods per year, during which an incumbent in the position remains an employee but is not at work.

(3) An employee in a designated partial -year position shall receive the following agency provided benefits:

(a) Health and life insurance benefits provided by the agency for full-time and part-time 100 hour employees;

(b) Sick leave in accordance with administrative regulation 902 KAR 8:120, Section 4 for pay periods the employee actually works;

(c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work, and

(d) Service credit for computation of seniority for those pay periods the employee has actually worked.

(4) The employee in a designated partial year position shall be considered a regular status employee following completion of the initial probationary period in accordance with Section 10 of this administrative regulation.

(5) The employee in a designated partial year position shall:

(a) Work the required number of hours unless the employee is absent due to illness or needing to provide care for an immediate family member; and

(b) Work at the request of the agency during periods of non-work to cover during coworker periods of illness, vacation schedules and other periods of agency demand.

Section 9. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each:

(a) Regular status employee on an annual basis; and

(b) Probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining:

(a) An annual and probationary salary advancement;

(b) Requesting and approving a:

1. Promotion;

2. Demotion; or

3. Dismissal; and

(c) The order of separation due to a reduction of work force.

(4) The employee performance evaluation described in this section shall be used until July 1, 2006.

Section 10. [9.] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsections (4) and (5) of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.

(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by administrative regulation 902 KAR 8:110, Section 1(4).

(5) If an employee is to be dismissed during the initial probationary period, the employee shall be notified at least seven (7) days prior to the effective date of dismissal and prior to the expiration of the probation period. If the employee commits a serious infraction of agency policy, or is involved in misconduct, the employee shall [may] be dismissed immediately. [The employee may be placed on a register of eligibles by the department, if appropriate.] The employee shall not be placed on a register [certified to the agency from which separated unless the agency requests otherwise].

(6) Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.

(7) The initial probationary period may be extended.

(a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be absent from work for twenty (20) days or more during the probationary period; or

(b) If the employee, acting with due diligence, has been unable to complete a required job related training course during the probationary period.

(8) The employee serving a probationary period may be eligible for promotion to a position in a higher class, if the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date the employee was promoted.

(9) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

Section 11. [10.] Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's [his] probationary period shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for an employee prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.

(4) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class.

(5)(a) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position in the former class.

(b) The employee may revert to a position in a different class if:

1. There is no vacancy in the former class; and

2. The employee is qualified; and

3. The employee is certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a regular status [permanent] employee is dismissed for cause while serving a promotional probationary period the employee shall have the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 12. [11.] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) An employee's lump sum payment for accumulated annual leave and compensatory time may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles or other agency property in the possession of the employee.

Section 13. [12.] Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of:

(a) Curtailment of work;

(b) Shortage of funds;

(c) Abolishment of a position;
(d) Modification of service requirements; or
(e) Other material change in the duties or organization of the agency.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval. The plan shall contain the name of the employee and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff. Upon approval of the plan by the department, the employee shall be notified that he is subject to layoff, and of:
(a) The reason for the layoff;
(b) The procedures established for the layoff of employees; and
(c) The rights granted employees subject to layoff.

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:
(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency.
(b) If a vacancy does not exist for a position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency, the employee shall be notified of [all] vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another [any] applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.
(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing:
1. That he is to be laid off effective at least fifteen (15) days after receipt of the notice; and
2. Of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:
(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;
(b) If a vacancy does not exist for a position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;
(c) If a position is not available, the employee shall be notified of [all] vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another [any] applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register; and
(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:
1. That the employee [he] is to be laid off effective at least fifteen (15) days after receipt of the notice; and
2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. For purposes of layoff, ["]probationary employee["] shall not include an employee serving a promotional probation.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another [any] applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be removed from a [any] register unless the employee:
(a) Notifies the department in writing that the employee no longer desires consideration for a position on a register;
(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;
(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;
(d) Is unable to perform the duties of the class;
(e) Has been convicted of a job related misdemeanor; or
(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 14. Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 13 of this administrative regulation.

(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time, if major organizational program and funding changes occur which may result in work reductions of one (1) or more employees of an agency.

(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.

(4) A furlough may be for periods up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods including portions of days.

(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period, an employee's benefits shall not be adversely affected except for the following:
(a) Retirement contributions shall be based on actual earnings;
(b) Holidays that occur during the furlough period shall not be paid;
(c) Annual leave and sick leave shall not be used;
(d) Accrual of annual and sick leave, anniversary dates and seniority shall be treated as if the employee is in pay status for the duration of the furlough;
(e) Medical, dental, life, and flexible spending accounts shall continue to be in effect upon payment of required contributions.

(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:
(a) Shorter work days;
(b) Intermittent days off; or
(c) Consecutive days off.

(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:
(a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;
(b) Include the period of the furlough and if the furlough is continuous or noncontinuous;
(c) Include the status of employee benefits; and
(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action including dismissal from employment.

Section 15. [13.] Incorporation by Reference. (1) "Form CH-40, Employee Performance Appraisal", (4/93 Edition), Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management [Local Health Department Operations], 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
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY. July 12, 2005
FILED WITH LRC: July 15, 2005 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a m in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005 Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert L. Nelson

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation establishes different types of appointments for employees of local health departments. The type of appointments include, initial probationary, temporary, variable hour, provisional, and seasonal. A new type of appointment is being added called partial year for positions that do not work the full 26 pay periods, such as in the school health program, the employee works the school calendar and would not work during the time the school is closed. A provision has been made for a voluntary or involuntary furlough in those situations where a local health department may face a financial short fall or decreased work.

(b) The necessity of this administrative regulation: The administrative regulation complies with KRS 211.1755. This statue allows the Cabinet for Health and Family Services to promulgate administrative regulations governing a personnel program for local health departments in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211:1755(1) states that the cabinet shall administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies. KRS 211:1755(3)(a), (b), and (c) describe the provisions and factors that comprise the contents of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes consistent guidelines for all local health departments regarding the type of appointments, resignation, layoff, and furlough of employees.

(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 primary purpose of the amendments is to provide options available to local health departments in the conditions of employment and circumstance that may assist when financial strain affects the ability of the local health department to support the full compliment of positions. The partial-year appointment is added to accommodate arrangement between the local school system and the health department to provide a nurse on site at the school.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to provide additional incentives to employees for the increasing complexity of the various jobs in the local health departments.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211:1755(1) states that the cabinet shall administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies. KRS 211:1755(3)(a), (b), and (c) describe the provisions and factors that comprise the contents of this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes This administrative regulation provides consistent standards for job classifications and various salary adjustments that are submitted for review and approval by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendments would affect county, city-county and district health departments. 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

(4) The implementation of the administrative regulation would not impact the local health departments. The amendments provide options to local health departments in employment considerations, and procedures that could be used in the event of the necessity to address financial shortfalls

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

(5) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost in the 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: There will no increase in fees or funding required to implement this administrative regulation.

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

(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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administration regulation will affect each local health department excluding Louisville Metro, Lexington – Fayette, and the Northern Kentucky Independent District Health Department

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation would apply to the appointment, probation, layoff, and resignation of employee's of local health departments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The provisions of this administrative regu-

lation applies to the appointment, probation, layoff, and resignation of employees of local health departments. These provisions would be a local health department decision and controlled by the existing budget of each local health department.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.090(3), 211.170(1), (2), 211.1751, 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170(2) and 211.1755(1) require the cabinet to administer and supervise the personnel functions of local health departments. KRS 211.1755(2) and (3) requires the cabinet to establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position having a higher salary as determined [:

~~(a) Meets the minimum requirements of the position having a higher salary; and~~

~~(b) Is certified~~] by the department.

(2) A promotion of an employee shall be based upon individual performance, with due consideration for length of service and capability of the individual employee to perform the duties and responsibilities of the [each] new position.

(3) A promoted employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

~~[(4) The salary of a promoted employee shall be raised to the greater of the following:~~

~~(a) The amount required to raise the salary of the employee to the minimum established for the class;~~

~~(b) Five (5) percent of the employee's current salary if the promotion is to a class having a one (1) or two (2) grade higher salary range; or~~

~~(c) Three (3) percent of the employee's current salary for each grade if the promotion is to a class having a salary range which is three (3) or more grades higher.~~]

(4) [(5)] An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) [(6)] A regular status employee may be promoted from a classified position to an unclassified position [~~retains the employee's status in the classified service~~]. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority. The employee shall retain eligibility to earn annual, sick, and compensatory time, if applicable, and also receive agency-provided benefits.

(6) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's probationary penod shall be extended for the same length of time as the granted leave to cover the absence.

(7) A performance evaluation shall be completed for an employee prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.

(8) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position in the former class subject to subsection (9) of this section. Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department of the reasons for unsuccessful completion.

(9) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class. The employee may revert to a position in a different class if:

(a) There is no vacancy in the former class, and

(b) The employee is qualified, and

(c) The employee is determined eligible by the department.

(10) If a regular employee in the classified service is dismissed for cause while serving a promotional probationary period the employee shall have the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 2. Transfers. (1) The appointing authority may, at any time, transfer a regular employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency.

(2) A transfer of a regular employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon determination of eligibility and certification by [~~of~~] the department. [~~The department may require a qualifying examination.~~]

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

(4) An employee initially appointed to a position in an agency having prior work experience in a health department established under KRS 212.350, 212.640, [~~or~~] 212.782, or an employee covered under KRS Chapter 18A, shall [~~may~~] use the length of prior employment in determining the rate of earning annual leave provided for under 902 KAR 8:120 if the prior work experience does not exceed three (3) years since separation.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) A documented disciplinary problem or the inability of an employee to perform a duty or responsibility required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

~~[(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is classified one (1) or two (2) grades lower.~~

~~(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.~~

~~(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position, shall be reduced determined by adding the total percentage difference, as described by the compensation plan, between the employee's current grade level and the grade of the classification to which the employee is demoted.~~]

(2) [(5)] If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(3) [(6)] If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the orginal appointment had been to the position of the lower class.

(4) [(7)] The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY. July 12, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert L. Nelson (502) 564-3796

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the requirement for and the process for the promotion, transfer, and demotion of a local health department employee

(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is responsible for supervising the personnel functions of local health departments in Kentucky except for the Lexington-Fayette County, the Louisville-Jefferson County, and the Northern Kentucky District Health Department. KRS 211.1755 allows the department to promulgate administrative regulations addressing policies for the local health department personnel program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute provides for a personnel program for local health departments through the promulgation of administrative regulations. The statute consists of several aspects of personnel administration. This administrative regulation provides for an employee to be promoted or demoted and the requirement for each.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides a uniform requirement for promotion, demotion, and the transfer of employees among the local health departments.

(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 removes the salary adjustment for a promotion and demotion and places the adjustment in administrative regulation 902 KAR 8:060 which describes other salary adjustments.

(b) The necessity of the amendment to this administrative regulation: The amendments to the administrative regulation remove the salary adjustment associated with the personnel actions to administrative regulation 902 KAR 8:060 to provide a central place for salary adjustments.

(c) How the amendment conforms to the content of the authorizing statutes. The amendments conform to the content of KRS 211.1755 in that the cabinet establishes consistent personnel policies applicable to all local health departments.

(d) How the amendment will assist in the effective administration of the statutes: The amendments move salary adjustment for a promotion and demotion to a different administrative regulation. This will assist in the interpretation and explanation of salary adjustment by putting them all in one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation would affect all local health departments except the Metro Louisville, Lexington-Fayette County and the Northern Kentucky Independent District Health Department.

(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 would be little impact related to the implementation of this administrative regulation. The amendment is a procedural change

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with this amendment.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administration regulation will affect each local health department excluding Louisville Metro, Lexington-Fayette, and the Northern Kentucky Independent District Health Department.

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation provides for the promotion, demotion, and the transfer of local health department employees.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-)

Other Explanation: The affect on the expenditures and revenues is dependent on the decision of each local health department to initiate one of the personnel actions of this administrative regulation. Any incurrence of funds would be a local health department decision.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

907 KAR 1:022. Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

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

STATUTORY AUTHORITY: KRS 194A.030(2), 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 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 provisions relating to nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services 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" or "ICF-MR-DD" means a licensed intermediate care facility for individuals with mental retardation or a developmental disability certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for individuals with mental retardation or a developmental disability.

(5) "Intermediate care facility for individuals with mental retardation or a developmental disability 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.

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

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

(a) A facility:

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

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

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

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

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

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

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

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

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

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

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

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 6 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 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 criteria if the services are provided in a Medicaid participating 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) An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Patient Status A patient status decision shall be based on medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or non-institutional services.

(1) For an admission and continued stay, an individual shall qualify 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

(a) On a daily basis:

1. The individual's needs mandate:

a. High-intensity nursing care services; or

b High-intensity rehabilitation 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 care needs in the following areas:

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

2. Nasogastric or gastrostomy tube feedings;

3 Nasopharyngeal and tracheotomy aspiration;

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

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

6. Bladder irrigations in relation to previously indicated stipulation;

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

8. Sterile dressings;

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

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

11. Receiving medication recently initiated, which requires high-intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

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;

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; or

(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;

11. 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

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) 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 meeting 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; or

2. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1.755 for entering or remaining in a facility.

(5) An individual shall meet ICF-MR-DD patient status if the individual requires physical or environmental management or 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 if:

1. The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for individuals with mental retardation or a developmental disability); and

3. The individual does not require psychiatric inpatient treatment;

(6) 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.

(7) 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.

(8) Excluding an individual with 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.

(9) Transfer trauma criteria. A Medicaid recipient in an NF who does not meet the low-intensity or high-intensity nursing care patient status criteria established in this section shall not be discharged from an NF if:

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

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

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

(10) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (9) of this section:

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

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

(11) The recipient transfer trauma criteria established in subsection (9) of this section shall not apply to an individual who resides in a facility which experiences closure or a license or certificate revocation.

Section 5. 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 of this administrative regulation.

(2) An individual's patient status shall be reevaluated at least once every six (6) months.

(3) 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 the reevaluation is finalized, payment shall no longer be appropriate in the facility.

Section 6. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury and meets the high-intensity nursing care patient status criteria established in Section 4 of this administrative regulation or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

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

(a) Central nervous system injury from physical trauma;

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

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

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

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

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

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

(d) The individual requires coma management; or

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

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

(a) The presenting problem;

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

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

(d) The services needed.

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

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

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

(c) Progressive dementia or other mentally impairing condition;

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

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

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

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

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

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

(c) 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. 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 established in Section 4(2) of this administrative regulation shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Medicaid Nursing Facility Services Manual.

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

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

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

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

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

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

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

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

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

1. Requires:

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

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

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

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

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

c. The individual requires twenty-four (24) hours per day high-intensity 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 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 Denial of Patient Status. 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. Reserved Bed Days. The department shall cover and reimburse for reserved bed days as follows: [~~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) Covered for a maximum of fourteen (14) days per calendar year [~~temporary absence~~] due to hospitalization; [~~, with an overall maximum of forty-five (45) days during a calendar year; and~~]

(b) Covered for a maximum of ten (10) days per [~~Fifteen (15) days during a~~] calendar year for leaves of absence other than hospitalization;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent.

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

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

Section 11. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, July 2005 [~~October 2004~~] edition, is incorporated by reference.

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

JAMES W. HOLSINGER, Jr., M D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502-564-6204)

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by establishing the provisions relating to NF and ICF-MR-DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically-needy and medically-needy recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation reduces the allowed amount of bed reserve days and establish bed reserve payment rates based on occupancy percentage..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to maintain the financial viability of the Medicaid
Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses bed reserve policy as authorized in order to maintain the financial viability of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist DMS in the effective administration of the authorizing statutes reducing the allowed amount of bed reserve days in order to maintain the financial viability of the Medicaid Program.

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

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation reduces the allowed amount of reserved bed days and establishes bed reserve payment rates based on occupancy percentage.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation will decrease expenditures by approximately $9.0 million ($6 2 million federal funds; $2.8 million state funds) for state fiscal year (SFY) 2006.

(b) On a continuing basis: DMS is unable to determine the future savings resulting from the amendment; however, DMS anticipates the savings will continue if not grow.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation reduces the amount of allowed bed reserve days.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation reduces the amount of allowed bed reserve days.

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

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

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

907 KAR 1:031 Payments for home health services.

RELATES TO: 42 C.F.R. 440.70, 447.325, 42 U.S.C. 1396a-d, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Kentucky 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 home health agency services that are provided to Kentucky's Medicaid-eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.

(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.

(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.70(d).

(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable cost of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.

(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:

(a) Each Medicare participating provider;

(b) Each category of service; and

(c) A unit of service.

(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of the HHA, the facility would have had to employ another person to perform the service.

(11) "Owner" means a person or a related family member with a cumulative ownership interest of five (5) percent or more.

(12) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.

(13) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.

(14) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.

(15) "Related family member" means:

(a) Husband or wife;

(b) Natural or adoptive parent, child, or sibling;

(c) Stepparent, stepchild, stepbrother, stepsister;

(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(e) Grandparent or grandchild;

(f) Spouse of grandparent or grandchild;

(g) Aunt or uncle; or

(h) Spouse of aunt or uncle.

(16) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.

(17) "Uniform desk review" or "UDR" means an analysis of a provider's Annual Medicaid Home Health/HCB Cost Report to determine if the data is adequate, complete, accurate, and reasonable.

(18) "Usual and customary charge" means the uniform amount which a medical provider charges the general public for a specific service or procedure.

Section 2. Reimbursement Requirement. A home health service shall be provided in accordance with 907 KAR 1:030 to be eligible for reimbursement.

Section 3. Payment to an In-state HHA. (1) Except as provided in Section 15 of this administrative regulation, the department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:

(a) Speech therapy;

(b) Physical therapy;

(c) Occupational therapy;

(d) Medical social services;

(e) Home health aide services; and

(f) Skilled nursing services.

(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:

(a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;

(b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;

(c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:

1. Trending the total cost data to the beginning of a rate year; and

2. Indexing cost data established pursuant to subparagraph 1 of this paragraph for inflationary cost increases projected to occur during the rate year;

(d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)2 of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection;

(e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection;

(f) The interim rate for a publicly-operated HHA shall be the lesser of:

1. The average unit cost pursuant to paragraph (d) of this subsection; or

2. The Medicare upper limit as issued to the provider through a Medicare letter; and

(g) The interim rate for a nonpublicly-operated HHA shall be the lesser of the:

1. Maximum average unit cost as established pursuant to paragraph (d) or (e) of this subsection that the provider is eligible to receive;

2. Medicaid upper limit pursuant to Section 7 of this administrative regulation; or

3. Medicare upper limits.

(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs

(a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:

(a) Disposable medical supplies; and

(b) Enteral nutritional products.

(4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:

(a) Settled To the lesser of the:

1. Allowable Medicaid cost, as established in an HHA cost report that the department has:

a Audited; or

b. Desk reviewed, or

2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C F.R. 413 13(f) shall be settled pursuant to paragraph (a)1 of this subsection; and

(b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions.

(5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:

(a) Settled to the lesser of the:

1. Allowable Medicaid cost, as established by the Kentucky Medicaid Medical Supply Cost Settlement Worksheet, that the department has:

a Audited; or

b. Desk reviewed; or

2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a)1 of this subsection; and

(b) Settled utilizing aggregation of costs in accordance with the Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions.

(6)(a) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2.

(b) If a settlement pursuant to subsection (4) or (5) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.

(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation.

(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:

(a) Considered a new HHA; and

(b) Reimbursed at the interim rate equal to the lesser of:

1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 7(2)(e) of this administrative regulation; or

2. The current Medicare upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:

(a) Submitted pursuant to Section 8 of this administrative regulation; and

(b) Received by the department by May 31 preceding the rate year.

(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department shall grant a rate change if the provider:

(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and

(b) Submits a projected cost report.

(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4) or (5) of this administrative regulation.

Section 5. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 7 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 3(2)(e) of this administrative regulation, in accordance with the following payment schedule:

INCENTIVE PAYMENT SCHEDULE	
PERCENTAGE OF PER UNIT COST TO UPPER LIMIT	INCENTIVE PAYMENT PER VISIT AMOUNT
95.01% - 100%	–
90.01% - 95%	$1 00
85 01% - 90%	$1 50
80 01% - 85%	$2.00
80% and below	$2.50

(2) An incentive payment shall

(a) Be subject to verification of visits;

(b) Bear an inverse relationship to the current year basic per visit cost; and

(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.

(3) The portion of an interim rate equal to the "incentive payment per visit amount" shall not be subject to retrospective settlement pursuant to Section 3(4) or (5) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.

(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of the agency's:

(a) Usual and customary billed charge;

(b) Medicare upper limit; or

(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:

(a) Disposable medical supplies; and

(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:

(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:

1. Urban; or

2. Rural.

(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.

(c) Each HHA's average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:

1. Grouped pursuant to paragraph (b) of this subsection; and
2. Arrayed from lowest to highest.

(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.

(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(3) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:

(a) A publicly-operated HHA; or

(b) A new HHA who does not have two (2) full years of operation.

(4) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 6(2) of this administrative regulation, an HHA shall submit to the department a completed cost report.

(a) That includes workpapers utilized to prepare the cost report including:

1. Detail of how a reclassification or an adjustment was calculated;
2. A working trial balance; and
3. Schedules tying the trial balance to the cost report,

(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;

(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions; and

(d) Pursuant to 42 C F.R. 413 24(a), (b), (c), and (e).

(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:

(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control,

(b) The provider submits a request for the extension in writing; and

(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.

(3) An HHA's payment shall be suspended if:

(a)1. Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and

2. A cost report has not been submitted to the department;

(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or

(c) The provider fails to provide the department with access to records pursuant to:

1. 907 KAR 1:672, Section 2(6); or
2. Subsection (4) of this section.

(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:

(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d); and

(b) Documentation of work or services performed if compensation is claimed by the:

1. Owner; or
2. A related family member of the:
   a. Owner; or
   b. Administrator.

(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.

(6) If the department is denied access to a subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.

(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:

(a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:

1. Beginning with the first day of the provider's fiscal year immediately preceding the provider's termination date; and
2. Ending on the date of termination of its provider agreement with the Medicaid Program; and

(b) A final settlement pursuant to Section 3(4) or (5) of this administrative regulation is completed by the department

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:

(a) Reflective of a provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(2) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:

(a) Allowable cost to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413 90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413 98, and

(f) Therapy and other services pursuant to 42 C F.R. 413.106.

Section 10. Limitations on Allowable HHA Cost. (1) Board of directors' fees.

(a) The cost of board of director's fees shall be limited annually to:

1.a. Five (5) meetings for a single-facility organization; or

b. Twelve (12) meetings for a multiple-facility organization; and

2. $200 for each director of the board attending each meeting, including the cost of attending the meeting.

(b) The cost associated with a private club membership shall not be an allowable cost.

(2) Motor vehicles.

(a) An allowable motor vehicle cost shall be:

1. Limited to cost related to patient care; and
2. Documented sufficiently to support business use.

(b) An allowable cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the federal income tax mileage allowance.

(c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:

1. Included in the employee's W-2 statement; or
2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.

(d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:

1. Compensation to an owner does not exceed the owner's compensation limits pursuant to Section 11 of this administrative regulation; and
2. The total compensation package to a nonowner is reasonable pursuant to 42 C.F.R. 413.9(b).

(3) The cost associated with political contributions shall not be allowable.

(4) The following legal fees shall not be allowable costs:

(a) A legal fee associated with unsuccessful lawsuits against the Cabinet for Health and Family Services or the department;

(b) A legal fee incurred by the provider in an attempt to block

the approval of a certificate of need for another provider;

(c) A legal fee associated with the acquisition of another HHA;

(d) A legal fee resulting from the commission of an illegal act by an:

1. HHA;
2. HHA's owner; or
3. HHA's agent, or

(e) A legal fee unrelated to patient care.

(5) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:

1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;
2. Agreed to by involved parties; or
3. As ordered by the court.

(6) Travel expenses. The cost of travel expenses shall be limited to:

(a) Activities related to the educational needs of the:

1. Agency owners;
2. Directors; or
3. Staff;

(b) Reasonable and necessary cost pursuant to 42 C.F.R. 413.9(b) as determined in evaluating the:

1. Number of trips taken;
2. Expense associated with each trip;
3. Number of persons attending each function; and
4. Appropriateness of the training; and

(c) Trips taken within the forty-eight (48) contiguous United States.

Section 11. Owner's Compensation Limits. (1) Compensation to an owner who is not an administrator shall:

(a) Be considered an allowable cost pursuant to 42 C.F.R. 413.102; and

(b) Exclude:

1. Board of directors' fees; and
2. Fringe benefits routinely provided to all employees.

(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.

(3) A full-time owner-administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:

(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:

1. The owner's proof of performance of a necessary function; and
2. Documentation of time claimed for compensation; and

(b) A salary from the agency with which the person is primarily associated.

(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.

(5) Compensation to an owner-administrator of a rural or urban HHA shall be:

(a) Limited to $60,579 beginning July 1, 1999;

(b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor's, Inc.; and

(c) Published annually through a notification to all providers to advise of the revised limits for owner's compensation to be effective July 1 of each year.

Section 12. Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:

(a) Review or audit by the department; and

(b) A final retroactive settlement based upon an adjustment to an HHA provider's costs reported in a cost report for any reporting period under review or audit.

(2) The department shall perform a uniform desk review (UDR) of each provider's annual cost report.

(3) A summary of the UDR shall be used:

(a) To settle the cost report without audit; or

(b) To determine the extent to which audit verification is required.

(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the "Government Auditing Standards".

Section 13. Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect until July 1, 2002.

Section 14 Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1:030 at the lesser of:

(1) The provider's usual and customary charge; or

(2) The Medicaid fixed upper payment limit per unit of service as established in Section 15 of this administrative regulation.

Section 15. Fixed Upper Payment Limits [~~Effective July 1, 2002~~] (1) Except for state fiscal year 2006, the following rates shall be the fixed upper payment limits for home health services:

Service	Fixed Upper Payment Limit
Skilled Nursing	$83 00 per visit
Home Health Aide	$32 50 per visit
Speech Therapy	$81.00 per visit
Physical Therapy	$81.00 per visit
Occupational Therapy	$81 00 per visit
Medical Social Service	$65 00 per visit

(2) For state fiscal year 2006, the above-listed rates shall be increased by five (5) percent and be the home health service upper payment limits. The increased upper payment limits shall sunset at close of business June 30, 2006 and be reduced by five (5) percent effective July 1, 2006.

Section 16. Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:

(a) Payments received for services on or after November 1, 2002 in accordance with Section 15 of this administrative regulation; and

(b) The estimated cost of providing services during the same time period.

(2) Based on a provider's most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.

(3) If a provider's cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 15 of this administrative regulation, the department shall recoup any excess payments.

Section 17. Reimbursement Review and Appeal. An HHA may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Annual Medicaid Home Health/HCB Cost Report", Department for Medicaid Services, May 1991 edition;

(b) "The Annual Medicaid Home Health/HCB Cost Report Instructions", Department for Medicaid Services, May 1991 edition;

(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;

(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition; and

(e) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions", Department for Medicaid Services, June 2003 edition.

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

ject 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.

JAMES W. HOLSINGER, JR., MD, Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J D , Commissioner
APPROVED: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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 The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home health services.

(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 reimbursement methodology for home health services.

(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 statutes by establishing the reimbursement methodology for home health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases home health service rates by 5%.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with 2005 GA HB 267.

(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 increasing home health service rates by 5% as mandated by 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by increasing home health service rates by 5% as mandated 2005 GA HB 267

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all home health service providers enrolled in the Home Health Service 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. Beginning September 1, 2003, the department will make additional payment to a local county health department home health agency equal to the difference between payments received for services on or after November 1, 2002. Supplemental payments shall be based on data from the most recently submitted annual cost report. Also, home health providers will be impacted as they will complete a "Medicaid Medical Supply Cost Settlement Worksheet" for FYE June 30, 2003 and submit along with the worksheet their Medicare cost report.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment to this administrative regulation will increase expenditures by approximately $3 million ($2 08 million federal funds; $0 92 million state funds) in SFY 2006.

(b) On a continuing basis: The home health service rate increased is mandated for the second year of the biennium budget which expires June 30, 2006.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to 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: DMS estimates that the amendment to this administrative regulation will increase expenditures by approximately $3 million ($2 08 million federal funds; $0.92 million state funds) in SFY 2006; thus, an increase in funding is needed.

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

(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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

907 KAR 1:045. Payments for community mental health center services.

RELATES TO: KRS 205 520(3), 210.370 [~~, EO 2004-444~~]
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 42 C.F.R. 447.325, 42 U.S.C. 1396a-d
EFFECTIVE: July 1, 2005
NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-444, effective May 11, 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 program of Medical Assistance. 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 community mental health center services.

Section 1. Community Mental Health Centers. Participating in-state community mental health centers shall be reimbursed as

follows:

(1) Effective July 1, 2005 [2004] the payment rate that was in effect on June 30, 2002, for community mental health center services shall remain in effect throughout state fiscal year (SFY) 2006 [2005] and there shall be no cost settling.

(2) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

Section 2. Implementation of Payment System. (1) Payments shall be based on units of service. One (1) unit for each service shall be defined as follows:

Service	Unit of Service
Inpatient Service	15 minutes
Individual Therapy	15 minutes
Group Therapy	15 minutes
Family Therapy	15 minutes
Collateral Therapy	15 minutes
Intensive In-Home Therapy	15 minutes
Home Visit Service	15 minutes
Emergency Service	15 minutes
Personal Care Home	15 minutes
Evaluations, Examinations, and Testing	15 minutes
Therapeutic Rehabilitation for Children	1 hour
Therapeutic Rehabilitation for Adults	1 hour
Chemotherapy Service	15 minutes
Physical Examinations	15 minutes

(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.

(3) Except for an initial unit of a service, a service that is:

(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

(4) An individual provider shall not exceed four (4) units of service in one (1) hour.

(5) Overpayments discovered as a result of audits shall be settled through recoupment or withholding.

(6) The vendor shall complete an annual cost report on forms provided by the cabinet (and included in Community Mental Health-Mental Retardation Reimbursement Manual) not later than ninety (90) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(7) Each community mental health center shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(8) Payments due a community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1:044, mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the "Community Mental Health - Mental Retardation Reimbursement Manual".

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating out-of-state community mental health centers shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

Section 5. Appeal Rights. A provider may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1.671.

Section 6. Incorporation by Reference. (1) The "Community Mental Health - Mental Retardation Reimbursement Manual, July 2005 [2004] edition", is incorporated by reference.

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

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner

APPROVED BY AGENCY: June 30, 2005

FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for community mental health center services.

(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 reimbursement methodology for community mental health center services.

(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 statutes by establishing the reimbursement methodology for community mental health center services.

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

(a) How the amendment will change this existing administrative regulation. This administrative regulation is being amended to establish effective July 1, 2005, that the reimbursement rate for community mental health center services in effect on June 30, 2002 shall remain in effect throughout state fiscal year (SFY) 2006.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain the financial viability of the Medicaid program.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing community mental health center service reimbursement for SFY 2006.

(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 establishing community mental health center service reimbursement for SFY 2006.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 14 community mental health centers providing services.

(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: Community mental health service providers will continue to receive throughout SFY 2006 the rate in effect as of June 30, 2002.

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

(a) Initially: Implementing this administrative regulation will not generate any additional costs to the Department for Medicaid Services (DMS) given that it continues a prior rate freeze into SFY 2005.

(b) On a continuing basis: Implementing this administrative regulation will not generate any additional costs to the Department for Medicaid Services (DMS) given that it continues a prior rate freeze into SFY 2005.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to 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: The amendment to this administrative regulation does not increase any fee nor does it require any additional funding.

(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 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 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 Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 1:061. Payments for ambulance ~~[medical]~~ transportation.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396, 440.170, 447.200-447.205, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)~~[, EO 2004-726]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~ The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Department for Medicaid Services for ambulance ~~[medical]~~ transportation services

Section 1. Definitions. (1) "Advanced life support (ALS) emergency ambulance transportation" means an ambulance service meeting the standards for advanced life support services established in accordance with 202 KAR 7:580 and 7:584.

(2) "Advanced Life Support (ALS) Medical First Response Provider" means an emergency medical professional licensed in accordance with 202 KAR 7:595 to provide ALS care.

(3) "Air ambulance provider" means an air ambulance service licensed in accordance with 202 KAR 7:510 and 7:590.

(4) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care if a hospital emergency room is not located within a recipient's county of residence or a contiguous county.

(5) "Basic life support (BLS) emergency ambulance transportation" means an ambulance service which meets the standards for basic life support services established in 202 KAR 7:580 and 7:582.

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

(7) "Membership or subscription fee" means a payment collected from a recipient by a provider which entitles the recipient to free or discounted ambulance transportation services.

(8) "Recipient" is defined in KRS 205.8451(9).

(9) "Upper limit" means the maximum reimbursement rate the department shall pay an ambulance transportation provider for the service provided.

Section 2. Reimbursement for Licensed Ambulance Services. (1) The department shall reimburse an ambulance service at the lesser of:

(a) The provider's usual and customary charge for the service; or

(b) An upper limit established by the department for the service.

(2) Except for an air ambulance transportation service, the upper limit for an ambulance service shall be calculated by adding a base rate, mileage allowance, and flat rate fees as follows:

(a) For ALS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of 100 dollars;

2. A mileage allowance of four (4) dollars per mile; and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(b) For BLS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of seventy-five (75) dollars;

2. A mileage allowance of three (3) dollars per mile; and

3. If transported concurrently, a flat rate of twenty (20) dollars for an additional recipient;

(c) For ALS or BLS emergency ambulance transportation to an appropriate medical facility or provider other than the emergency room of a hospital:

1. A base rate of fifty-five (55) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient;

(d) For BLS emergency ambulance transportation to the emergency room of a hospital during which the services of an ALS Medical First Response provider is required to stabilize the recipient:

1. A base rate of 100 dollars;

2. A mileage allowance of four (4) dollars per mile; and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(e) For BLS emergency ambulance transportation to a medical facility or provider other than the emergency room of a hospital during which the services of an ALS Medical First Response provider are required:

1. A base rate of fifty-five (55) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents

per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient; and

(f) For non emergency ambulance transportation during which the recipient requires no medical care during transport:

1. A base rate of fifty (50) dollars; and

2. A mileage allowance of two (2) dollars per mile

(3) In addition to rates specified in subsection (2), administration of oxygen during an ambulance transportation service shall be reimbursed at a flat rate of ten (10) dollars per one (1) way trip when medically necessary.

(4) Reimbursement for air ambulance transportation shall be an all inclusive rate which shall be the lesser of

(a) The provider's usual and customary charge; or

(b) An upper limit of $3,500 per one (1) way trip

(5) Payment for a service identified in subsections (2) through (4) of this section shall be contingent upon a statement of medical necessity which:

(a) Shall be maintained in accordance with 907 KAR 1:060, Section 5(2), and

(b) May be requested by the department for post-payment review.

(6) If a recipient has paid a membership or subscription fee to a transportation provider in order to access free or discounted ambulance transportation service, the provider shall not be eligible for Medicaid reimbursement for service provided to the recipient.

Section 3. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671. ~~["Advanced life support (ALS) ambulance services" means ambulance services meeting the standards for advanced life support services established in accordance with 902 KAR 14:070, 907 KAR 14:080, 907 KAR 14:082, and 907 KAR 14:084.~~

~~(2) "Advanced Life Support (ALS) Medical First Response Providers" means the utilization of certified and licensed emergency medical professionals in accordance with 902 KAR 14:100 to provide advanced prehospital medical care.~~

~~(3) "Affiliate ambulance service" means a Class I ground ambulance provider who has entered into a formal written agreement with an ALS medical first response provider to jointly respond to prehospital medical emergencies for coordinated medical care and transportation. "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services, if provided by a Medicaid provider licensed for the provision of air ambulance services in accordance with 902 KAR 14:090.~~

~~(4) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services, if provided by a Medicaid provider licensed for the provision of air ambulance services in accordance with 902 KAR 14:090.~~

~~(5) "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.~~

~~(6) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.~~

~~(7) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who accompanies a minor child shall be considered to be an attendant.~~

~~(8) "Basic life support (BLS) emergency ambulance transportation services" means ambulance services meeting the standards for basic life support services established in 902 KAR 14:080 if provided by a Medicaid provider appropriately licensed for the provision of BLS services in accordance with 902 KAR 14:080, 907 KAR 14:082 and 907 KAR 14:084.~~

~~(9) "Commercial transportation carrier" means a commercial carrier which:~~

~~(a) Is licensed in accordance with KRS 281A.010(8), other states, or of the United States to transport members of the general public; and~~

~~(b) Has the authority provided by the Transportation Cabinet to operate in the county in which the transportation services is initiated.~~

~~(10) "Department" means the Department for Medicaid Services.~~

~~(11) "Loaded miles" means the miles in which the transportation carrier is transporting at least one (1) recipient to or from a Medicaid covered service.~~

~~(12) "Medical condition" means a condition of the recipient which does not allow him to travel alone or without physical assistance.~~

~~(13) "Membership or subscription fee" means a charge from the provider to the recipient which entitles the recipient to free or discounted ambulance transportation services.~~

~~(14) "Noncommercial group carrier" means a vendor licensed in accordance with KRS 281.619, who provides bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including a vendor whose transportation costs are allowable costs under their reimbursement system (except community mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:~~

~~(a) Community action agencies (or successor agencies) providing bus or bus type service for a poverty or near-poverty area target population; and~~

~~(b) Other similar providers as identified by the department.~~

~~(15) "Nonemergency health transportation services (NEHT)" means transportation services provided by a Medicaid provider meeting the standards for nonemergency health transportation services, and licensed in accordance with 902 KAR 14:060 and 902 KAR 14:070.~~

~~(16) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients.~~

~~(17) "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.~~

~~(18) "Specialty carrier" means a vendor who:~~

~~(a) Provides, through specially equipped vehicles, medical transportation for nonambulatory recipients, or for ambulatory but disoriented recipients;~~

~~(b) Provides services not available from other transportation vendors; and~~

~~(c) Has a disabled persons certificate in accordance with KRS 281.014(5) with approval by the department for reimbursement at specialty carrier rates and is licensed appropriately in accordance with KRS Chapter 281.~~

~~(19) "Upper limit" means the maximum reimbursement rate that the department shall pay the transportation provider for the services provided.~~

~~Section 2. Licensed Ambulance Services Reimbursement.~~

~~(1) The department shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department.~~

~~(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies, as applicable:~~

~~(a) The base rate for ALS emergency transportation to the emergency room of a hospital shall be set at eighty five (85) dollars per one (1) way trip; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty five (25) dollars shall be set for an additional recipient with no additional allowance for mileage.~~

~~(b) The rate for air ambulance transportation shall be an all inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of $3,500. A claim for air ambulance transportation services shall be submitted to the~~

department and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at sixty-five (65) dollars per one (1) way trip, the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for an additional recipient with no additional allowance for mileage.

(d) The base rate for an ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at fifty-five (55) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1); a flat rate of fifteen (15) dollars shall be set for an additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the department. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services if transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services if transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for a licensed ambulance service if no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) An oxygen rate, which is set at ten (10) dollars per one (1) way trip; for a licensed ambulance service, excluding air ambulances.

(h) The cost of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the department.

(i) The base rate for BLS emergency transportation with an ALS medical first response provider to stabilize the patient before the BLS run is completed to the emergency room of a hospital, shall be:

1. Eighty-five (85) dollars per one (1) way trip,

2. Two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); and

3. Flat rate of twenty-five (25) dollars for an additional recipient with no additional allowance for mileage.

(j) The base rate for BLS providing emergency transportation with ALS medical response provider assistance to medical facility or provider which is not the emergency room of a hospital shall be:

1. Fifty-five (55) dollars per one (1) way trip;

2. Two (2) dollars per mile from mile one (1); and

3. Flat rate of fifteen (15) dollars for an additional recipient with no additional rate for mileage.

(k) Payment for services identified in paragraphs (i) or (j) of this subsection shall be contingent upon review of required documentation by the department. Required documentation shall be a statement of medical emergency by the attending medical provider and ALS medical first response provider.

(3) The department shall not reimburse a licensed participating ambulance service provider who charges a membership or subscription fee that entitles the recipient to free or discounted ambulance transportation if a recipient has paid that membership or subscription fee.

Section 3. Commercial Transportation Carrier Reimbursement. The department shall reimburse a participating commercial transportation carrier at usual commercial rates with limitations as follows:

(1) For taxi services provided in regulated areas in accordance with KRS 281.635(4), the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area as defined in 907 KAR 1:060; and

(2) For a taxi service in an area of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for taxi services in regulated areas when they go outside the medical service area as defined in 907 KAR 1:060, the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger, up to the upper limit. The upper limit for a taxi transporting a recipient shall be:

(a) The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles;

(b) The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles;

(c) The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles;

(d) The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles; or

(e) For trips of fifty-one (51) miles or above, the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles; and

(f) Inclusive of the cost for transporting a parent or attendant

Section 4. Private Automobile Carrier Reimbursement.

(1) The department shall reimburse private automobile carriers the minimum rate per mile paid to state employees in accordance with 200 KAR 2:006.

(2) A private automobile carrier shall have a signed participation agreement with the department prior to furnishing a reimbursable medical transportation service and provide proof of a current driver's license and minimum state required insurance coverage.

(3) Toll charges shall be reimbursable if presented with a receipt.

(4) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized.

Section 5. Noncommercial Group Carriers. The department shall reimburse a participating noncommercial group carrier for actual reasonable, allowable costs to the provider based on cost data submitted to the department by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the recipient rate.

Section 6. Specialty Carriers.

(1) Participating specialty carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the department; or

(c) The program maximum established for the service.

(2) Program maximums shall be:

(a) For nonambulatory recipients who require the use of a wheelchair, the upper limit shall be twenty-five (25) dollars for the first recipient plus four (4) dollars for each additional recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(b) For ambulatory recipients who are disoriented, the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional recipient transported on the same trip, for each time a recipient is transported to or transported from the medical service site. To this base rate shall

~~be added one (1) dollar and fifty (50) cents per loaded mile for the first recipient for miles the recipient is transported, and toll charges actually incurred and verified, mileage charges shall not be allowed for additional recipients.~~

~~(c) For paragraphs (a) and (b) of this subsection, empty vehicle miles shall not be included when computing allowable reimbursement for mileage.~~

~~(3) Reimbursement shall be made at specialty carrier rates for the following types of recipients only:~~

~~(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include recipients who need to be transported as stretcher patients; and~~

~~(b) Ambulatory recipients who are disoriented and require an attendant as authorized by a physician.~~

~~(4) The recipient or guardian shall obtain a statement from the recipient's physician (or, if the recipient is in a nursing facility, from the director of nursing, charge nurse, or medical director in lieu of a physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.~~

~~Section 7. Specially authorized transportation services authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service. The amount allowed shall not exceed the usual and customary charge of the provider. The department shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.~~

~~Section 8. Use of Flat Rates. Transportation payment shall not exceed the lesser of:~~

~~(1) Six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip); or~~

~~(2) The usual fee for the participating transportation provider computed in the usual manner, if:~~

~~(a) The recipient chooses to use a medical provider outside the medical service area as (defined in 907 KAR 1:060);~~

~~(b) The medical service is available in the recipient's medical service area; and~~

~~(c) The recipient has not been appropriately referred by the medical provider within his medical service area.~~

~~Section 9. Posting of Rates. A transportation provider, except a private auto provider, shall be allowed to post his rates with the Department for Community Based Services offices in the counties they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised once per quarter. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.~~

~~Section 10. Meals and Lodging. The flat rate for meals and lodgings for a recipient or attendant if preauthorized (or postauthorized, if appropriate) by the department shall be reimbursed at the actual charge up to the upper limits as paid to state employees in accordance with 200 KAR 2:006.~~

~~Section 11. Limitations. (1) Reimbursement shall be made to a provider for loaded miles only.~~

~~(2) Reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre or postauthorization, for medical transportation as required by the department.~~

~~(3) Authorization shall not be granted for a recipient transported for purposes other than to take the recipient to or from a covered Medicaid service being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from a covered medical service being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from a covered medical service based on the medical condition of the recipient.~~

~~(4) Reimbursement shall be limited to a transportation service and shall not include the service, salary or time of the attendant or parent.~~

~~(5) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pick up to point of delivery.~~

~~(6) Provisions of this administrative regulation do not apply to recipients in counties served by a human service transportation delivery system in accordance with 603 KAR 7:080 and 907 KAR 3:065.~~

~~Section 12. Appeal Rights. A recipient shall have the right of appeal as established in 907 KAR 1:563.~~]

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner

APPROVED BY AGENCY: June 30, 2005

FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement criteria for the provision of ambulance services to the Medicaid-eligible population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically-necessary health services identified in KRS 205.560 and 205.6314.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the criteria for the provision of emergency and non emergency transportation by ambulance of a Medicaid recipient to a necessary medical service.

(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 increases the base rate allowance and mileage allowance rates for ambulance transportation and deletes obsolete information pertaining to non emergency medical transportation which is now addressed in 907 KAR 3:066.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with 2005 GA HB 267.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment increases ambulance transportation reimbursement as mandated in 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by increase ambulance transportation reimbursement as mandated by 2005 GA HB 267.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all ambulance carriers enrolled with the Medicaid Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. This amendment allows for an increase in set rates for ambulance service to offset increases in the cost of service provision

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment will increase expenditures by approximately $1 95 million ($1.35 million federal funds; 0 6 million state funds) for state fiscal year SFY 2006.

(b) On a continuing basis: The increase in fees is not established in legislation beyond SFY 2006; therefore, DMS is unable to estimate the future fiscal impact at this time.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The next fiscal year budget may need to be adjusted to provide funds for implementing the amendment to this administrative regulation if the increase is rendered permanent by future legislation.

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

(9) Tiering: Is tiering applied? Tiering was not 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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only a part of some local governments.

3. State the aspect or service of local government to which this administrative regulation relates: Local government owned or operated ambulance transportation services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

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, 483.10(i), 42 U.S C. 1396, a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3) [~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1.023; and

(b) If ordered by a physician:

1. Laboratory procedures; and

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department shall conduct an appraisal of each price-based NF.

(4) "Appraisal period" means a five (5) year period beginning with an appraisal base year. For example, the appraisal period corresponding to appraisal base year 2000 is January 1, 2000 through December 31, 2004.

(5) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(6) "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(7) "Case-mix" means the average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 2.0 data classified through the RUG III, M3 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.

(10) [~~(11)~~] "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(11) [~~(12)~~] "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.

(12) [~~(13)~~] "Land" means a surveyed tract or tracts of ground which share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(13) [(14)] "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(14) [(15)] "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.

(15) [(16)] "NF" or "nursing facility" means:

(a) A facility:

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

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

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

(b) A hospital swing bed that provides services in accordance with 42 U.S C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482 66.

(16) [(17)] "NF building" means a roofed and walled structure serviced by electricity, heating and cooling which is also an NF.

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

(18) [(19)] "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(19) [(20)] "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(20) [(21)] "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(i).

(21) [(22)] "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.

(22) [(23)] "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.

(23) [(24)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

Section 2. NF Reimbursement Classifications and Criteria. (1) An NF, a hospital-based NF, or an NF-MRS shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF level of care criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare Program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare Program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare Program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for an individual with mental retardation or developmental disability

Section 3. Swing Bed and Critical Access Hospital NF Bed Reimbursement. (1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NF's for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation, and

(b) Established effective January 1 of each year.

(2) Skilled nursing facility beds in a critical access hospital shall be reimbursed pursuant to subsection (1) of this section if the critical access hospital:

(a) Has no more than twenty-five (25) skilled nursing facility beds; and

(b) Has no more than fifteen (15) acute care patients in the skilled nursing facility beds

Section 4. Price-based NF Appraisal (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land, and

(b) $2,000 per licensed NF bed for equipment

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center (#503) model of the E.H Boeckh Commercial Building Valuation System to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address,

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports and similar areas). In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways) glass and aluminum standard allowance shall be twenty (20) dollars per square foot; bulkhead standard allowance shall be 5 (five) dollars per square foot;

3 Loading docks,

4. Bay windows, if not included in the perimeter calculation shall be valued at $1,500 each;

5. Code alerts, Wanderguards, or other special electronically-secured doorways (standard allowance shall be $1,500 for each fully-functioning door at the time of appraisal),

6. Automatic sliding doors (standard allowance shall be $2,700 per doorway),

7. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);

8. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (standard allowance shall be thirty-eight (38) dollars and fifty (50) cents per square foot);

9. Walk-in coolers or freezers;

10. Laundry chutes (standard allowance shall be $1,000 per floor serviced);

11. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be $4,500 for initial two (2) stops; $2,100 per additional stop);

12. Skylights (standard allowance shall be twenty-six (26) dollars per square foot);

13. Operable built-in oxygen delivery systems (valued at $250 per serviced bed), and

14. Carpeted wainscotting (standard allowance shall be three (3) dollars and fifty (50) cents per linear foot).

(4) An item listed in subsection (3)(z) of this section shall be subject to the Boeckh model #503 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section

(5) The department shall use the corresponding E.H. Boeckh System default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6) Values from the most recent E.H. Boeckh tables, as of July 1 of the year prior to the appraisal base year, shall be used during an appraisal. For example, values from the most recent 1999 E.H. Boeckh tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)1. The NF undergoes renovations or additions costing a minimum of $150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of $75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) [(13)] of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize an E.H. Boeckh building model other than the nursing home or convalescent center (#503) model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes, the appraisal shall be apportioned between NF and non-NF by dividing the number of licensed NF beds by the total number of beds, regardless of the occupancy factors.

(11) If, in an NF building, a provider conducts business activities not related to the NF, the appraisal shall be apportioned by the percent of NF square footage relative to the square footage of non-NF-related business activities.

(12) Cost of an appraisal shall be the responsibility of the NF being appraised.

(13) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(14) The department shall not consider the following location factors in rendering an appraisal

(a) Climate,

(b) High-wind zone;

(c) Degree of slope;

(d) Position;

(e) Accessibility; or

(f) Soil condition

Section 5. Standard Price Overview. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) 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 aid;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NF's; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding noncapital facility-related and capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2004 level:

MSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price without Capital Cost Component	Total Standard Price Excluding Noncapital Facility Related and Capital Rate Components
Urban	$78.24	$58.84	$137.08
Rural	$64.58	$52.24	$116.82

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(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 inflation adjustment [DRI], or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of.

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase mix adjustable portion of the NF's standard price which shall include an allowance to offset a provider assessment,

(c) The noncapital facility-related component, and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows

(a) The department shall add the total of.

1 The NF's average licensed bed value which shall.

a Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed $40,000;

2. A value for land which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1 of this paragraph; and

3. A value for equipment which shall be $2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor which shall:

1 Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) 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) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid Program pursuant to Section 3(4) of 907 KAR 1:672.

(4) 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; and

3. On the last date of each calendar quarter and revised no later than the data revision cut-off date established in subsection (7)(b) of this section;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twelve B (5.12B) thirty-four (34) group model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a random sample of twenty-five (25) percent of the price-based NF's Medicaid MDS assessments;

2. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraph 1 of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

3. If a review of records cited in subparagraph 2 of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall review 100 percent of the price-based NF's Medicaid MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold.

(4) If the department's review, in accordance with subsection (3)(c)2 and 3 of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a rereview within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)3 of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)3 of this section shall be allowed during a review or rereview.

(6) If a rereview of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the rereview; and

(b) Send the final results of the rereview to the NF within ten (10) business days of the conference.

(7) Following is a chart establishing:

(a) That an MDS extraction date shall be the last date of each quarter;

(b) That a final MDS assessment data revision cut-off date shall be the last date of the quarter following the date on which MDS data was extracted. For example, MDS data or revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;

(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date;

(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;

(e) MDS assessment accuracy thresholds and corresponding rate sanctions. For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and

(f) Rate sanction effective dates:

MDS Data Extraction Date	MDS Data Revision Cut-Off Date	Rate Effective Date	Audits Initiated	Required MDS Accuracy Threshold	Rate Sanction	Sanction Effective Date
6/30/01	9/30/01	10/1/01	10/2001	40%	$0.10 per patient day (ppd)	1/1/02
9/30/01	12/31/01	1/1/02	1/2002	40%	$0.10 ppd	4/1/02
12/31/01	3/31/02	4/1/02	4/2002	50%	$0.15 ppd	7/1/02
3/31/02	6/30/02	7/1/02	7/2002	50%	$0.15 ppd	10/1/02
6/30/02	9/30/02	10/1/02	10/2002	65%	$0 20 ppd	1/1/03
9/30/02	12/31/02	1/1/03	1/2003	65%	$0 20 ppd	4/1/03
12/31/02 and forward	3/31/02 and forward	4/1/03 and forward	4/2003 and forward	65-79% 40-64% Below 40%	$0 50 ppd $0 60 ppd $0 70 ppd	7/1/03 and forward

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

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10 (c)(8)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be [~~covered for a maximum of~~]:

(a) Covered for a maximum of fourteen (14) days per calendar year [~~temporary absence~~] due to hospitalization; [~~, with an overall maximum of forty-five (45) days during a calendar year; and~~]

(b) Covered for a maximum of ten (10) [~~Fifteen (15)~~] days during a calendar year for leaves of absence other than hospitalization;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) 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.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the HCFA Provider Reimbursement Manual - Part 2 (Pub. 15-11) Section 102, 102.1, 102 3, and 104, incorporated by reference into this administrative regulation; and

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services.

(1) 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) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1.479, and

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

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

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

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub 15-11) Chapter 1 Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period, April 2000 Edition";

(b) The "Instructions for Completing the Medicaid Supplemental Schedules, November 2003 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.

JAMES W. HOLSINGER, Jr., M.D , Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner

APPROVED BY AGENCY: June 30, 2005

FILED WITH LRC: July 1, 2005 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMEN PERIOD A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502-564-6204)

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement methodology for price based nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS reimbursement methodology for price based nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS reimbursement methodology for price based nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation reduces the allowed amount of bed reserve days and to base bed reserve payment on occupancy percentage.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to maintain the financial viability of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses bed reserve policy as authorized in order to maintain the financial viability of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist DMS in the effective administration of the authorizing statutes reducing the allowed amount of bed reserve days in order to maintain the financial viability of the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 279 price based nursing facilities currently participating in the Medicaid program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The allowed amount of bed reserve days will be lowered and reimbursement based on occupancy percentages

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

(a) Initially DMS estimates that the amendment to this administrative regulation will decrease expenditures by approximately $9 0 million ($6.2 million federal funds; $2.8 million state funds) for state fiscal year (SFY) 2006.

(b) On a continuing basis: DMS is unable to determine the future savings resulting from the amendment; however, DMS anticipates the savings will continue if not grow.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement the amendment to this administrative regulation will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the GA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees will be necessary to implement the amendment to his administrative regulation, and funding will be provided by the MART Fund in accordance with HB 292 of the 2004 Session of the GA.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The amendment to this administrative regulation reduces the allowed amount of bed reserve days as authorized.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards related to a federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

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

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

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205 6312, 205 6485, 42 C F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.505, 457.510, 457 515, 457.520, 457.530, 457.570, 42 U.S.C. 1396a, b, c, d, o, r-6, r-8, 2005 GA HB 267

STATUTORY AUTHORITY: KRS 194A 030(2), 194A 050(1), 205.520(3), 205.6312(5), 205 6485(1), 42 C.F R 431.51, 447.15, 447.51, 447.53, 447.54, 447.55, 447.57, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5), [EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY. [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments or other similar charges for Medicaid recipients. KRS 205.6485(1) requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program 42 U.S.C. 1396r-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance. This administrative regulation establishes the provisions relating to imposing and collecting copayments and premiums from certain recipients

Section 1. Definitions (1) "Copayment" means that portion of the cost of a Medicaid service that a recipient is required to pay.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Drug" means a covered drug provided in accordance with 907 KAR 1:019 for which the Department for Medicaid Services provides reimbursement.

(4) "General ophthalmological service" means a service or procedure listed under this heading in the American Medical Association's Current Procedure Terminology (CPT).

(5) "Long-term care facility" is defined by KRS 216.510(1).

(6) "KCHIP" means the Kentucky Children's Health Insurance Program.

(7) "KCHIP Separate Insurance Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(8) "Nonemergency service" means a service that does not meet emergency service criteria as established in 42 C.F.R. 447.53.

(9) "Optional eligibility group" means a group or group not identified in Social Security Act 1902(a) as a mandatory group or a group established as optional pursuant to Social Security Act 1902(a) or Social Security Act 1905(a).

(10) "Premium" means an amount paid periodically to purchase health care benefits.

(11) [(9)] "Recipient" means an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with 907 KAR Chapters 1 through 4.

(12) [(10)] "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earning disregards in accordance with 907 KAR 1:011, Section 5(8)(b).

Section 2. Copayment Amounts and Exclusions. (1) Except as excluded in subsection (4) or (5) of this section, the department shall require a recipient to make a copayment for:

(a) Each drug dispensed by a dispensing pharmacy;
(b) A service provided by:
1. An audiologist;
2. A chiropractor;
3. A dentist,
4. A hearing aid dealer;
5. An optician;
6. A podiatrist; [or]
(c) A general ophthalmological service provided by:
1. A physician;
2. An advanced registered nurse practitioner;
3. A primary care center or federally qualified health center;
4. A rural health clinic; [or]
5. An optometrist;
(d) Each visit to a physician's office,
(e) An outpatient hospital service provided accordance with 907 KAR 1:014;
(f) Each visit to an emergency room for a nonemergency service; or
(g) An inpatient hospital admission pursuant to 907 KAR 1:012.

(2) The amount of the required copayment shall be:
(a) Except for an individual in an optional eligibility group, one (1) dollar for each:
1. Generic drug dispensed by a dispensing pharmacy; or
2. Atypical antipsychotic drug dispensed by a dispensing pharmacy if the atypical antipsychotic drug does not have a generic equivalent;
(b) Except for an individual in an optional eligibility group, two (2) dollars for each brand name drug dispensed by a dispensing pharmacy if the brand name drug:
1. Does not have a generic equivalent; and
2. Is available under the Supplemental Rebate Program;
(c) Except for an individual in an optional eligibility group, three (3) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy;
(d) Effective August 1, 2005:
1. Two (2) dollars per recipient, per provider, per date of service for a:
a. Visit to a physician's office; or
b. Service identified in subsection (1)(b) or (c) of this section;
2. Three (3) dollars per recipient, per provider, per date of service for a:
a. Covered outpatient hospital service provided in accordance with 907 KAR 1:014; or
b. Visit to an emergency room for a nonemergency service;
3. Fifty (50) dollars per recipient, per provider, per date of service for each covered admission to a hospital for inpatient hospital services provided in accordance with 907 KAR 1:012;
(e) Effective July 15, 2005, three (3) dollars for each:
a. Generic drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group; or
b. Atypical antipsychotic drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group if the atypical antipsychotic drug does not have a generic equivalent;
5. Ten (10) dollars for each brand name drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group if the brand name drug:
a. Does not have a generic equivalent; and
b. Is available under the supplemental rebate program; or
6. Twenty (20) dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy to an individual in an optional eligibility group.

(3) For each prescription or service for which a copayment is required, the department shall reduce provider reimbursement as follows:
(a) Except for a drug provided to an individual in an optional eligibility group, one (1) dollar from the dispensing fee for a drug dispensed by a dispensing pharmacy;
(b) Two (2) dollars from reimbursement for a service identified in subsection (1)(b) or (c) of this section;
(c) Three (3) dollars from reimbursement;
a. For a covered outpatient hospital service as identified in subsection (1)(e)1 of this section; or
b. For a drug identified in subsection (2)(d)4 of this section;

(d) Ten (10) dollars from reimbursement for a drug identified in subsection (2)(d)5 of this section;

(e) Twenty (20) dollars from reimbursement for a drug identified in subsection (2)(d)6; or

(f) Fifty (50) dollars from reimbursement for each covered admission to a hospital for inpatient hospital services as identified in subsection (1)(g). [~~(2) The amount of the required copayment shall be~~

~~(a) One (1) dollar for each drug dispensed by a dispensing pharmacy; or~~

~~(b) Two (2) dollars per recipient, per provider, per date of service for a service identified in subsection (1)(b) or (c) of this section.~~

~~(3) The department shall reduce by the amount of the required copayment:~~

~~(a) A dispensing fee for a service identified in subsection (1)(a) of this section; and~~

~~(b) Reimbursement for a service identified in subsection (1)(b) or (c) of this section.~~]

(4) The department shall not require a copayment and a provider shall not collect a copayment from a recipient for:

(a) A service excluded in accordance with KRS 205.6312;

(b) A service provided to a recipient who has reached his or her 18th birthday but has not turned nineteen (19) and who is:

1. In the custody of the state; and

2. In a foster home or residential placement facility; or

(c) A service provided to a recipient residing in a long-term care facility.

(5) The department shall not require a copayment and a provider shall not collect a copayment in accordance with the exclusions established in 42 U S C 1396o and 42 C F.R. 447 53

(6) [~~(a)~~] Unless excluded in subsection (4) or (5) of this section, the department has determined that each Medicaid recipient:

1. Should be able to pay a required copayment; and

2. Shall be responsible for a copayment.

[~~(b) The department shall indicate on a recipient's Medical Assistance Identification card if the recipient is responsible for a copayment.~~]

(7) [~~(6)~~] The department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 3. Provisions for Collection of Copayments. (1) A provider shall collect a copayment from a recipient in an amount and for a service described in Section 2(1) and (2) of this administrative regulation.

(2) A provider may collect the copayment at the time a service is provided or at a later date.

(3) A provider shall not refuse to provide a service if a recipient is unable to pay a required copayment. This provision shall not:

(a) Relieve a recipient of an obligation to pay a copayment; or

(b) Prevent a provider from attempting to collect a copayment.

(4) If it is the routine business practice of a provider to terminate future services to an individual with uncollected debt, the provider may include uncollected copayments under this practice.

(5) A provider shall give advanced notice to a recipient with uncollected debt before services can be terminated.

(6) A provider shall not waive a copayment obligation as imposed by the department for a recipient.

(7) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396R-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(8) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

Section 4. Premiums for KCHIP Separate Insurance Program Recipients. (1) The department shall require a family with children participating in the KCHIP Separate Insurance Program to pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP Separate Insurance Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid

(3) Retroactive eligibility as described in 907 KAR 1:605, Section 2(3), shall not apply to a recipient participating in the KCHIP Separate Insurance Program.

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid

(b)1. A KCHIP Separate Insurance Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP Separate Insurance Program recipient shall not be required to pay the missed premium before reenrolling.

Section 5. Premiums for Transitional Medical Assistance Recipients. (1) The department shall require a family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, to pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month; or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or

2. Failure to receive the billing notice.

Section 6. Notices and Collection of Premiums. (1) Premiums shall be collected in the amounts and from the recipients described in Sections 4 and 5 of this administrative regulation.

(2) The department shall give advance notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full; and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

Section 7. Cumulative Cost-sharing Maximum. (1) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of annual family income.

(2) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of the average gross monthly income less the average monthly costs of child care necessary for the employment of the caretaker relative.

Section 8. Provisions for Recipients in Medicaid-Managed Care. (1) If a copayment is imposed on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705, it shall be in accordance with the limitations and provisions established in this administrative regulation.

(2) The premium provisions pursuant to Sections 4 and 5 of this administrative regulation shall apply to a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705.

(3) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6) shall not apply to a recipient required to pay a premium pursuant to Section 4 of this administrative regulation.

Section 9. Freedom of Choice. In accordance with 42 C.F.R.

431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

Section 10 Notice of Discontinuance, Hearings, and Appeal Rights. (1) The department shall give notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 4 or 5 of this administrative regulation using the new income level

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 4(4)(a) or 5(2) of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1 560 upon discontinuing benefits for nonpayment of premiums

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.560.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 30, 2005
FILED WITH LRC: July 1, 2005 at 8 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to imposing and collecting copayments and premiums from certain Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish copayments or other similar charges for Medicaid recipients. This administrative regulation is also necessary to establish premiums for families with children in the Kentucky Children's Health Insurance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.6312(5) by establishing copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o. This administrative regulation conforms to the content of KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance 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 provisions relating to imposing and collecting copayments and premiums from certain Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the Department for Medicaid Services (DMS) copayment policies as follows: Medicaid members, except for individuals in an optional eligibility group, shall be required to pay 1 dollar for each generic drug or atypical antipsychotic drug that does not have a generic equivalent, 2 dollars for each brand name drug that does not have a generic equivalent and is available under the supplemental rebate program; 3 dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy Medicaid members in an optional eligibility group shall be required to pay one 3 dollars for each generic drug or atypical antipsychotic drug that does not have a generic equivalent; 10 dollars for each brand name drug that does not have a generic equivalent and is available under the supplemental rebate program; 20 dollars for each nonpreferred brand name drug dispensed by a dispensing pharmacy. Additionally, all Medicaid members shall be required to pay 2 dollars for each visit to a physician's office; 3 dollars for each outpatient hospital service or visit to an emergency room for a nonemergency service; and 50 dollars for each admission to a hospital for inpatient hospital services. Copayment exclusions exist in accordance with 42 U.S.C. 1396o and 42 C.F.R. 447.53.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary 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 statutes, including HB 267 of the 2005 Session of the GA, by establishing copayments to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o.

(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 provisions relating to imposing and collecting copayments from certain Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients, outpatient pharmacy providers, physicians, and hospitals 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: Prior to the amendment, Medicaid recipients paid a 1 dollar copayment for all prescriptions and 2 dollars for each general ophthalmological service or each service provided by an audiologist, chiropractor, dentist, hearing aid dealer, optician, or podiatrist. The amendment increases copayment amounts for some prescription drugs, depending on the category and depending on whether an individual is in an optional eligibility group, and implements copayments designated services. DMS believes these policies will promote recipient understanding of the cost of medical assistance and encourage responsible utilization. Providers are expected to collect designated copayments from Medicaid recipients.

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

(a) Initially: The Department anticipates an expenditure reduction of $21.6 million ($15 million in federal funds and $6.6 million in state matching funds) for state fiscal year (SFY) 2006. The anticipated total savings breaks down for each category as follows: a

decrease of $10 million for prescription drugs; a decrease of $5 million for emergency room visits, a decrease of $3 million for physician office visits; a decrease of $2 5 million for inpatient hospital services; and a decrease of $1.1 million for outpatient hospital services.

(b) On a continuing basis: DMS is unable at this time to estimate the anticipated expenditure reductions on a continuing basis.

(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 However, an increase in designated copayment amounts is 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. However, this administrative regulation establishes provisions relating to imposing and collecting copayments and premiums from certain recipients

(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 recipient cost sharing.

2. State compliance standards. This administrative regulation complies with KRS 205.6312(5) by establishing copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o. This administrative regulation complies with KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance Program.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes copayments or similar charges to be paid by Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o.

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this administrative regulation is necessary to control the rising costs of prescription drugs and other services covered by the Medicaid Program, thereby maintaining the financial viability of the Department for Medicaid Services.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Human Support Services
Division of Aging Services
(Amendment)

910 KAR 1:180. Homecare program for the elderly.

RELATES TO: KRS 13B.010-13B.170, 194A 700(1), (7), 205.010(6), 205.201, 205 203, 205.455-465, 209 030(2) (3), 42 U S.C. Chapter 35 [~~3001 et seq.~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2), 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 Division of Aging Services under the Cabinet for Health and Family Services 42 U.S.C. Chapter 35 [~~3001 et seq.~~] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate [~~Cabinet for Health Services to adopt~~] administrative regulations [as] necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet [~~for Health Services~~] as the state agency to administer 42 U.S.C. Chapter 35 [~~3001 et seq.~~] in Kentucky and promulgate administrative regulations for this purpose. [~~The function of~~] This administrative regulation sets [~~is to set~~] forth the standards of operation for a [~~the~~] homecare program for elderly [~~older~~] persons in Kentucky[~~, in compliance with the statutory requirements of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter~~].

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1) [~~means activities of self-help: being able to feed, bathe, dress, transfer and toilet oneself~~]

(2) "Area plan" means the plan submitted by a district for the approval of the division which releases funds under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of [~~in-depth~~] information about a person's situation and functioning.

(4) "Case manager" means an individual who meets the requirements of Section 5(1) and (2) of this administratve regulation.

(5) [~~Assessment shall identify needs and resources so that a comprehensive plan can be made with the client~~

~~(3)~~] "Case management" means a process, coordinated by a case manager, for linking a client to [~~ensuring clients receive~~] appropriate, comprehensive, and timely homecare services [~~to meet their needs~~] as identified in a "DAS-891, Plan of Care" [~~the assessment~~] by:

(a) Planning;

(b) Referring [~~Linking the client to appropriate agencies in the formal and informal caregiving systems~~];

(c) Monitoring; and

(d) Advocating

(6) "District" is defined by KRS 205.455(4).

(7) "Formal support system" means paid services provided to an individual from any funding source.

(8) [~~Advocacy through the employment of casework activities in order to achieve the best possible resolution to individual needs in the most effective way.~~

~~(4)~~] "Homecare services" means services that:

(a) Are:

1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and

2. Directed to the individual specified in subparagraph 1 of this paragraph toward:

a. Prevention of unnecessary institutionalization; and

b. Maintenance [~~those services to eligible individuals directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services~~] in the least restrictive environment, excluding residential facilities; and

(b) Includes:

1. Chore services as defined by KRS 205.455(1);

2. Core services as defined by KRS 205 455(2);

3. Escort services as defined by KRS 205.455(5).
4. Home-delivered meals as defined by KRS 205.455(8);
5. Home-health aide services as defined by KRS 205.455(9).
6. Homemaker services as defined by KRS 205.455(10).
7. Home repair services as defined by KRS 205.455(11);
8. Personal care services as defined by subsection 11 of this section;
9. Respite services as defined by KRS 205.455(12);

(9) "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program;

(10) "Instrumental activities of daily living" as defined by KRS 194A.700(7).

(11) "Personal care services" means assistance with activities of daily living.

(12) [~~Homecare services shall include:~~

~~(a) Homemaker;~~

~~(b) Home health aide;~~

~~(c) Chore;~~

~~(d) Home delivered meals;~~

~~(e) Core;~~

~~(f) Escort;~~

~~(g) Home repair; and~~

~~(h) Respite care services.~~

~~(5) "Personal care services" means services directed toward maintaining, strengthening or safeguarding the functioning of a person in his home. These services may include:~~

~~(a) Assisting the individual in activities of daily living; and~~

~~(b) Helping to identify and report health needs.~~

~~(6) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his own home. These services may include:~~

~~(a) Shopping;~~

~~(b) Budgeting;~~

~~(c) Meal preparation;~~

~~(d) Laundry; and~~

~~(e) Cleaning.~~

~~(7) "Instrumental activities of daily living" means the components identified in home management plus the taking of prescribed medication.~~

~~(8)~~] "Reassessment" means [~~the formal~~] reevaluation of the [~~client's~~] situation and functioning of a client [~~and of the services delivered to identify changes which may have occurred since the previous assessment~~].

Section 2. Service Provider Responsibilities. A [~~The~~] service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet [~~for Health Services~~] shall:

(1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;

(2) Review the provision of homecare services to assure safety and consistency. [~~Justify in the area plan a decision not to fund a defined homecare service, including an assurance of adequate availability from another funding source.~~]

(3) Treat the client in a respectful and dignified manner and [~~,~~] involve the client and caregiver in the delivery of homecare services [~~and provide services in a safe manner~~];

(4) Permit staff of the cabinet [~~for Health Services~~] and the district [~~area development districts~~] to monitor and evaluate homecare services provided;

(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the Division [~~Office~~] of Aging Services[~~, Cabinet for Health Services~~];

(6) Maintain a written job description [~~descriptions~~] for each paid staff and volunteer position [~~positions~~] involved in direct service delivery;

(7) Develop and maintain written personnel policies and a wage scale [~~scales~~] for each job classification [~~category~~]; and

(8) Designate a supervisor to [~~and~~] assure that staff providing homecare services are provided [~~professional~~] supervision.

Section 3. Homecare Plan. For program approval, a [~~the area development~~] district shall submit to the cabinet [~~for Health Services~~] a proposal within its [~~included in the~~] area plan to include at least the following:

(1) An assurance of access for the Division [~~Office~~] of Aging Services to records of the district [~~contracting agency~~] pertaining to its contract for delivery of homecare services; and

(2) A plan for the delivery of homecare services in the area to be served by the district [~~contracting agency~~] containing:

(a) Identification of services currently provided in the district; and

(b) The following assurances:

1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;

2. A policy and procedure for assuring a client's

a. Eligibility in accordance with Section 5(4) of this administrative regulation; and

b. Implementation of case management [~~Identification of uniform procedures for certification and eligibility and case management~~];

3. A policy and procedure for a client's [~~(c) Methods for~~] referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;

4. A policy and procedure for

[~~(d) Explanation of~~] volunteer programs to be utilized;

5. [~~(e)~~] Identification of a service provider [~~providers~~] for each specific service;

6. A policy and procedure [~~(f) Methods~~] for the periodic monitoring of a client [~~clients~~] for the appropriateness of homecare services and to assure safety and consistency [~~service~~];

7. A [~~(g) Unit cost and~~] number of proposed clients for homecare services to be provided directly or by contract;

8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 8(2) of this administrative regulation

9. A policy and procedure

[~~(h) Procedures~~] for the acceptance of a voluntary contribution [~~contributions~~] and assurance the contribution [~~that income~~] shall be used to maintain or increase the level of service; [~~and~~]

10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);

11. A policy and procedure for

[~~(i) Identification of linkages to existing services including adult protective services;~~

~~(3) A plan for implementation of case management responsibilities;~~

~~(4) A description of long and short range goals in the provision of approved homecare services;~~

~~(5) A description of~~] the manner in which delivery of homecare services shall be provided to an eligible individual;

12. A policy and procedure for monitoring a subcontract for delivery of [~~to eligible individuals is to be undertaken,~~

~~(6) A procedure published for monitoring subcontracts for~~] direct homecare services; and

13. A policy and procedure assuring

[~~(7) Assurance that assessment for eligibility shall be conducted initially and at least every six (6) months thereafter; and~~

~~(8) Assurance~~] that an assessment, as specified in Section 5(4) of this administrative regulation, shall include the following information submitted electronically to the division in the formats prescribed by the Aging Services Tracking System:

a. Demographic information, including family income;

b. [~~(a)~~] Physical health;

c. [~~(b)~~] Activities of daily living and instrumental activities of daily living [~~(potential and actual performance)~~];

d. [~~(c)~~] Physical environment [~~and living arrangements~~];

e. [~~(d)~~] Mental and emotional status [~~(cognitive and emotional)~~];

f) Assistive devices, sensory impairment, and communication abilities;

(g) Formal and informal resources; and

(h) Summary and judgement.

[~~(e) Financial resources;~~

~~(f) Social support and participation; and~~

~~(g) Current services utilization.~~]

Section 4. Eligibility. (1) A prospective client [~~Each applicant~~] for homecare services shall: [~~file an application for participation and~~]

(a) Demonstrate that the prospective client [~~he~~] is a person sixty (60) years of age or older; and

(b) Meet [~~meets at least~~] one (1) of the following criteria:

1. Be functionally [~~(a) The applicant has functional limitations that require a sheltered environment with provision of social and health-related services specific to his activities of daily living and who has been determined~~] impaired in the performance of [~~at least~~]:

a. [~~1.~~] Two (2) [~~physical~~] activities of daily living; [~~or~~]

b. [~~2.~~] Three (3) instrumental activities of daily living; or

c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living.

(c) Have [~~(b) The applicant has~~] a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care; or

(d) Be: [~~(c) The applicant is~~]

1. Currently residing in a:

a. Skilled nursing facility;

b. [~~,~~] An intermediate care facility; or

c. A personal care facility; and

2. Can be maintained at home if appropriate living arrangements and support systems are [~~can be~~] established.

(2) Eligibility shall be determined by a case manager:

(a) Qualified in accordance with Section 5(1) and (2); and

(b) In accordance with Section 5(4) of this administrative regulation [~~at the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an assessor or case manager pursuant to Section 5(1) of this administrative regulation shall determine eligibility~~].

(3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed of the eligibility [~~Homecare clients shall be informed that they shall be eligible for services~~] as long as they meet eligibility requirements.

(4) [~~Eligibility determination shall be based upon physical (functional) impairments; however, the assessor and case manager may consider individuals whose deficiencies are caused by mental or emotional impairments including Alzheimer's or other related disorders if these impairments affect physical (functional) capacities.~~

~~(5)~~] The [~~assessor or~~] case manager shall determine a prospective client's eligibility for:

(a) The following services in accordance with 910 KAR 1:160:

1. Adult day services;

2. Adult day health services; or

3. Alzheimer's respite care services; or

(b) In-home services.

(5)(a) [~~Individuals being referred as needing adult day care, adult day health care, Alzheimer's respite care, or in-home services. Use of this procedure may be waived by the Executive Director, Office of Aging Services, Cabinet for Health Services, for those area development districts who provide generic assessment and case management.~~

~~(6)~~] The homecare program shall not supplant or replace services provided by the client's informal support system.

(b) If needs are being met by the informal support system, the client shall be deemed ineligible.

(c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) A case manager [~~Case managers~~] shall meet one (1) of the following qualifications:

(a) A minimum of a bachelor's degree [~~or master's degree~~] in:

1. Social work;

2. [~~,~~] Gerontology;

3. [~~,~~] Psychology;

4. [~~,~~] Sociology, or

5. A field relevant to geriatrics, no experience required;

(b) A minimum of a bachelor's degree [~~or master's degree~~] in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree with two (2) years experience in working with the elderly; or

(d) A Kentucky registered nurse with a:

1. Current Kentucky license and two (2) years experience in working with the elderly; or

2. [a] licensed practical nurse with a current Kentucky license and three (3) years experience in working with the elderly.

(2)(a) In addition to meeting the requirements of subsection (1) of this section, case management training shall be required as follows:

1. Fourteen (14) hours of initial training within six (6) months of hire; and

2. Sixteen (16) hours of in-service training annually.

(b) [~~, and~~

~~(c)~~] Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(3) [~~(2)~~] Each client shall be assigned a [~~specific~~] case manager.

(4)(a) A client [~~(3) Clients~~] shall be assessed initially and reassessed at least every six (6) months thereafter by a case manager.

(b) [~~person who meets case manager qualifications~~] After each assessment or reassessment, the case manager shall complete the DAS-888, Homecare Certification of Eligibility.

(c) [~~, herein incorporated by reference, shall be completed.~~] If the client is ineligible, the case shall be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver.

(5) [~~(4)~~] The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

1. Any funding source; or

2. Volunteer;

(b)1. Make a reasonable effort [~~other funding sources or volunteers. Reasonable effort shall be made~~] to secure and utilize informal supports for each client; and

2. Document the reasonable effort in the client's case record; and

(c) [~~(5) Case managers shall:~~

~~(a)~~] Monitor each client monthly including one (1):

1. Home visit with face-to-face contact at least every other month; or

2. Phone contact during any month a home visit does not occur; and

(d) [~~and (b)~~] Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the [a] client.

(7)(a) A district shall assure

[~~(6) Case management providers shall assure~~] a minimum of one (1) full-time equivalent case manager for each 100 [~~homecare~~] clients.

(b) If the case manager also provides assessment services, the case manager's [~~his~~] caseload shall not exceed seventy-five (75) clients.

(c) Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement.

(d) Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with paragraphs (a) and (b) of this subsection.

(8) A [~~(7) Each homecare~~] client shall receive homecare services in accordance with an individualized "Plan of Care" [~~care plan~~] developed cooperatively with the client's [~~his~~] case manager [~~and revised if appropriate~~] The plan shall:

(a) Relate to an [~~the~~] assessed problem;

(b) Identify a [~~the~~] goal to be achieved;

(c) Identify a [~~the~~] scope, duration and unit [~~units~~] of service required;

(d) Identify a [~~the~~] source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

Section 6. Quality Service. If a client is determined eligible for

homecare services, the case manager shall [Assurance]

(1) [Upon admission to the homecare program, each client shall

(a)] Read, or have read and explained to the client the purpose of the "DAS-889, Quality Service Agreement";

(2) Provide a copy of the completed agreement to the client which [him if necessary;

(b) Sign and receive a copy of a completed DSS-1253, Quality Assurance Agreement, herein incorporated by reference. The agreement] shall contain the name, address, and telephone number of.

(a) [1.] The current case manager;

(b) A designated representative of the district; and

(c) A representative of the Division of Aging Services.

(3) Ensure that a copy of a "DAS-890, Report of Complaint or Concern" containing [and

2. The area development district homecare coordinator.

(2) A client call or other contact with the case manager, area development district or Office of Aging Services shall be documented on the DSS-1254, Report of Complaint or Concern, herein incorporated by reference. The identity of the complainant shall be kept confidential if requested.

(3) Copies of] written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is [shall be] maintained in the client's [case manager's] permanent file and documented in a centralized log; and

(4) Document[Documentation of] investigation and efforts at resolution or service improvement that shall be available for monitoring by the [area development] district and Division [Office] of Aging Services staff.

Section 7. Request for a Hearing. A client may request a hearing:

(1) As provided by KRS 13B.010-170; and

(2) Within thirty (30) days of any decision by the;

(a) Cabinet;

(b) District; or

(c) Service provider.

Section 8. Fees and Contributions. (1) A [The assessor or] case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment, [or] case management services, or home-delivered meals.

(b) The [assessor or] case manager shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a[-] waiver or reduction of fee due to the extraordinary out-of-pocket expenses [shall be documented on the Homecare Authorization Statement for Extraordinary Expenses, herein incorporated by reference].

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person [persons] shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130% the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services [as set forth below]. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0-129%	0%	0%	0%
130%-149%	20%	0%	0%
150%-169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

[Homecare Client Income and Applicable Percentage of Fee		
Annual Income	1 Person	2 Persons
$8000 and below	0%	0%
$8001 – $10150	20%	0%
$10151 – $12300	40%	20%
$12301 – $14450	60%	40%
$14451 – $16650	80%	60%
$16651 – $18850	100%	80%
$18851 – $20950		100%
For each additional family member add $2150.]		

(3)(a) A contribution from an individual, family, or other entity [Contributions from individuals, families or other entities] shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's [his] failure to voluntarily contribute to support services.

(4) The [area development] district shall review and approve the procedure [procedures] implemented by a service provider [provider agencies] for the collecting, accounting, spending, and auditing of fees and donations.

Section 9. [8.] Allocation Formula. The homecare program funding formula shall consist of a $20,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 10. [9.] Termination or Reduction of Homecare Services. (1)(a) A [The] case manager or [and the] client shall decide to terminate homecare services.

(b) Homecare services may be reduced or terminated if [when]:

1. [(a)] The client's condition or support system improves; or

2. [(b)] A determination is made that the "DAS-891, Plan of Care" [care plan] cannot be followed.

(2) If homecare services are terminated or reduced, the case manager shall:

(a) [Complete page two (2) of the Application for Homecare Services, Notification to Client, herein incorporated by reference;

(b)] Inform the client of the [his] right to file a complaint;

(b) Notify the client or caregiver of the action taken; and

(c) [Complete section IV of the DSS-864 Homecare Services, herein incorporated by reference, listing the closure reason; and

(d)] Assist the client and family in making referrals to another agency [other agencies] if applicable.

(3) If homecare services are terminated or reduced due to reasons unrelated to the clients needs or condition, the designated district representative [homecare coordinator], in conjunction with the case manager, shall determine reduction or termination on a case-by-case basis.

Section 11. [10.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAS-888, Homecare Certification of Eligibility, 8/05" ["Homecare Certification of Eligibility", (12/90), Office of Aging Services];

(b) "DAS-889, Quality Service Agreement, 8/05" [DSS-1253 "Quality Assurance Agreement", (12/90), Office of Aging Services];

(c) "DAS-890, Report of Complaint or Concern, 8/05" [DSS-1254 "Report of Complaint or Concern", (12/90), Office of Aging Services];

(d) ["Homecare Authorization Statement for Extraordinary Expenses", (12/90), Office of Aging Services; and

(e) DSS-864 "Homecare Services", (12/90), Office of Aging Services;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family

Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLSINGER, JR., Secretary
MIKE BURNSIDE, Undersecretary
MICHAEL A. FIELDS, Undersecretary
MARLA MONTELL, Commissioner
APPROVED BY AGENCY: June 15, 2005
FILED WITH LRC: June 22, 2005 at 4 p m

PUBLIC HEARING AND COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to the contact person.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Weinrauch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies service provider responsibilities for the Homecare Program for elderly adults; sets forth the requirements of an area plan for program approval; identifies client eligibility criteria and case manager qualifications; describes the case management process; establishes a grievance and fair hearing process, fees for service, and an allocation formula; and incorporates forms by reference.

(b) The necessity of this administrative regulation: This administrative regulation is needed to set forth the standards of operation for a homecare program for elderly persons in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.204 by setting forth the standards of operation for a homecare program for elderly persons in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation describes the Homecare Program for the elderly administered by the Cabinet for Health and Family Services pursuant to KRS 205.204.

(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: The amendment to this administrative regulation will define the services offered under the homecare program; require additional assurances in the plan for the delivery of homecare services, expand client eligibility criteria, establish requirements for training of case managers, clarify that phone contact may occur during any month in which a visit does not occur; establish a hearing process, and base the fees charged for program participation on the official poverty income guidelines published annually in the Federal Register.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to make modifications to the homecare program for elderly persons by clarifying the services available under the Homecare Program, to require additional assurances for the appropriateness, safety and consistency of area programs throughout the commonwealth, increase the number of persons served; ensure minimum standards for case managers; update standards of practice, establish a fair hearing process, and update fees charged for the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to KRS 205.204 by providing for a homecare program for elderly persons and to KRS 205 203(2) by establishing a fee schedule for the provision of services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation details the homecare program administered by the Cabinet for Health and Family Services pursuant to KRS 205 204.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: All area agencies on aging and their subcontractors will be affected by this administrative regulation Individuals eligible for the Homecare Program include those who are 60 years of age or older and meet at least 1 of the following criteria: Functionally impaired in the performance of 2 activities of daily living; 3 instrumental activities of daily living; or a combination of 1 activity of daily living and 2 instrumental activities of daily living; have a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care, or be currently residing in a skilled nursing facility, intermediate care facility, or personal care facility and can be maintained at home if appropriate living arrangements and support systems are established.

(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 area agencies of aging and their subcontractors would be mandated to provide additional assurances in the plan for homecare services; to determine client eligibility based on the new criteria; to ensure that case managers receive initial and in-service training; to mail notification of ineligibility or case closure to the client or caregiver; to comply with the provisions of KRS 13B.010-170; and to collect a fee in accordance with the rate established herein. Clients would be affected by the change in the fee charged for services; most clients would pay less than under existing regulations.

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

(a) Initially: Any initial cost would be minimal and will be absorbed in the existing agency budget.

(b) On a continuing basis: Any ongoing cost would be minimal and will be absorbed in the existing agency budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds will continue to be used for 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: 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: This administrative regulation establishes a fee for services. The amendment to this administrative regulation bases the fee charged on the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services. The amendment to this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied since policy is applied in a like manner to all eligible elderly persons.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Policy Development
Department for Community Based Services
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2),

216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1385, 2005 Ky. Acts ch. 173 Part I, H.10 (4)

STATUTORY AUTHORITY: KRS 194A.050(1) [~~194B.050(1)~~], 205.245, 42 U.S.C. 1382e-g, 2005 Ky. Acts ch. 173 Part I, H.10 (4) [~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) [~~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 194B.050(1)~~] requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973 and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. In addition, 2005 Ky. Acts ch. 173 Part I, H.10 (4) requires the cabinet to increase State Supplementation payments to personal care homes by twenty (20) dollars per month per eligible resident for the personal needs allowance and two (2) dollars per day per eligible resident for a facility payment increase. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind or had a disability.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue when:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(6); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20.041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

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

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20.036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20.041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1 Discharge to a:

a Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient, and

(b) Notify a local county department within five (5) working days of the:

1. Death, or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this Section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this Section may result in prosecution.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

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

1. The spouse;

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

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this Section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(6); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this Section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(6); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding.

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient, and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made on or after July 1, 2005, $1,099 [~~January 1, 2005, $1,019~~],

(b) A resident of a family care home made on or after January 1, 2005, $751; or

(c) Caretaker:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2005, $641;

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2005, $938; or

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2005, $984.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care [~~or family care~~] home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) [~~forty (40)~~] dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem:

1. For a state supplementation recipient in the personal care home's care; and

2. As of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an "Application for Mental Illness or Mental Retardation Supplement Program Benefits" with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter:

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail a "Notice of Decision to Personal Care Home" to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with a "Monthly Report Form" that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a.

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the "Monthly Report Form" to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this Section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) A personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the "Application for Mental Illness or Mental Retardation Supplement Program Benefits" is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or mental retardation basic training, or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this Section, the department shall pay twenty-five (25) dollars to a personal care home:

(a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months.

(b) A personal care home's Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey after the initial survey may be completed during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria is met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training.

a Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b An individualized care plan shall not be required for the criteria in clause a of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population, as specified in Section 12(1)(c)2 of this administrative regulation, is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department:

(a) Monthly; and

(b) By the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, established in 921 KAR 2:050.

(9) If a criteria for certification is not met, the department shall mail a "Notice of Decision to Personal Care Home" to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the "Notice of Decision to Personal Care Home":

(a) Relevant to unmet certification criteria specified on the "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey"; and

(b) Within ten (10) working days after the "Notice of Decision to Personal Care Home" is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, as specified in Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home, edition 1/05";

(b) "Monthly Report Form, edition 1/05";

(c) "Application for Mental Illness or Mental Retardation Supplement Program Benefits, edition 1/05", and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey, edition 1/05".

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

MIKE ROBINSON, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: June 7, 2005
FILED WITH LRC: June 21, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 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 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.245 by complying with an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients. This administrative regulation conforms to KRS 194A.050(1) which requires the secretary to adopt administrative regulations necessary under applicable state laws to operate programs and fulfill responsibilities vested in the cabinet.

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

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation increases State Supplementation payments to Personal Care Homes by $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary due to passage of 2005 GA HB 267. HB 267, AN ACT relating to appropriations and revenue measures providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state-supported activities, increases State Supplementation payments to Personal Care Homes by $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 194A.050(1) by complying with the mandated increase to Personal Care Homes in 2005 GA HB 267.

(d) How the amendment will assist in the effective administration of the statutes: This amendment in accordance with KRS 194A.050(1) implements the mandated State Supplementation payment increase of 2005 GA HB 267 to Personal Care Homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2005, there were approximately 3,347 personal care recipients of State Supplementation benefits. There were approximately 84 freestanding personal care homes and 118 personal care beds in long term care facilities.

(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 State Supplementation payment to a Personal Care Home is $1,099 minus the personal care allowance of $60 to the State Supplementation recipient.

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

(a) Initially: $3,218,120

(b) On a continuing basis: $3,218,120

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds or Agency Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The appropriated total of $3.3 million additional dollars in HB 267 is based upon a fee for a Child Abuse and Neglect (CAN) check in accordance with KRS 17.165. This and surplus in the State Supplementation Program will offset the $20 per month per eligible resident for the personal needs allowance and $2 per day per eligible resident for a facility payment increase. There are no fees in this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applied since passage of 2005 GA HB 267 increased State Supplementation payments to only Personal Care Homes and did not extend to Family Care Homes or individuals in a caretaker situation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. 416.2095 and 20 C.F.R. 416.2096.

2. State compliance standards. KRS 194A.050(1), 205.245.

3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. 416.2095 and 20 C.F.R. 416.2096.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 2005

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:150. Tracking registration of voters identifying with political organizations and groups, and voters of independent status.

RELATES TO: KRS 117.015(1), 118.015 (8), (9), 116 045 (8)
STATUTORY AUTHORITY: KRS 117.015 (1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 116 045 (8) requires the State Board of Elections to promulgate administrative regulations to provide for tracking of the registration of voters identifying with political organizations and political groups as defined in KRS 118.015, and voters of independent status.

Section 1. Definitions (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.
(2) "Political party" means as defined in KRS 118 015(1).
(3) "Political organization" means as defined in KRS 118 015 (8).
(4) "Political group" means as defined in KRS 118.015 9).
(5) "Track" means compiling information from the statewide voter registration system for the purposes of KRS 116.045(8).

Section 2. Tracking Process. (1) The board shall track the registration of voters identifying with political organizations and political groups known as:
(a) Constitution Party;
(b) Green Party;
(c) Libertarian Party;
(d) Reform Party; and
(e) Socialist Workers Party.
(2) The board shall track the registration of voters of independent status.
(3) Information tracked under KRS 116.045(8) shall be retained by the board as a permanent record and in accordance with the requirements of the Department of Libraries and Archives.

TREY GRAYSON, Chair
APPROVED BY AGENCY: June 21, 2005
FILED WITH LRC: June 30, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Sarah Ball Johnson, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Ball Johnson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for tracking of the registration of voters identifying with political organizations, political groups, or voters of independent status.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 116 045(8).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides for the tracking of information that helps assure that political organizations, political groups, independent voters, and the public have ready access to registration information on participants in the electoral process in addition to the 2 major political parties.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters; all candidates for office; all political parties, organizations, groups, and registered independents; all election officials and boards.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The groups will have ready access to voter registration information not previously kept by political organization, group, or independent status.
(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are costs estimated at $54,000 associated with updating the computer program to add a tracking feature. These costs shall be paid from existing budgets for FYE 2005.
(b) On a continuing basis: There are costs associated with the annual compilation of the information and of responding to requests for the information.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state funds appropriated to the State Board of Elections.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding shall not be necessary to implement this administrative regulation.
(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies to all citizens.

GENERAL GOVERNMENT CABINET
Board Of Pharmacy
(New Administrative Regulation)

201 KAR 2:290. Telehealth.

RELATES TO: KRS 315.310
STATUTORY AUTHORITY: KRS 315.035, 315.191(1)(a), 315.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035 requires a pharmacy to first obtain a permit from the Kentucky Board of Pharmacy before operating. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.310 requires the board to

promulgate administrative regulations to utilize telehealth in the provision of pharmacy services. This administrative regulation establishes requirements for pharmacies utilizing telehealth to employ remote dispensing into their pharmacy services.

Section 1. Definitions. (1) "Telehealth" means a central pharmacy in the Commonwealth of Kentucky and one (1) remote site located in an underserved area in the Commonwealth of Kentucky under common ownership that is connected via interactive computer, audio, and video to deliver health care

(2) "Remote site" means an extension of the central pharmacy site that is staffed by a certified pharmacy technician with access to the central pharmacy and its pharmacists via interactive computer, audio, and video while open to the public for business.

(3) "Central pharmacy" means a pharmacy permitted by the board located in the Commonwealth of Kentucky.

(4) "Certified pharmacy technician" means a person who has successfully completed the National Certification Examination administered by the Pharmacy Technician Certification Board and the certificate is current, or has successfully completed the Nuclear Pharmacy Technician Training Program at the University of Tennessee and the certificate is current.

(5) "Underserved area" means a geographic area that does not have reasonable access to pharmacy services.

Section 2. Underserved Area. (1) Factors that shall be included to determine an underserved area are:

(a) Remoteness of the geographic area;

(b) Pharmacist shortage in the area of the remote site;

(c) Reasonable accessibility to pharmacy services; and

(d) Other circumstances, in the discretion of the board that impairs reasonable access to pharmacy services.

(2) The board shall have the discretion to determine if an area is underserved.

(3) Factors that determine an underserved area shall be reviewed annually upon renewal.

Section 3. Operation. (1) The remote site shall operate under the permit number of the central pharmacy.

(2) The pharmacist of the central pharmacy shall be in charge of the remote site.

(3) A remote site shall be connected to the central pharmacy via interactive computer, audio, and video.

(4) A remote site shall use its central pharmacy's central processing unit as follows:

(a) Consecutive prescription numbers and all prescription records must be maintained at the central pharmacy;

(b) Prescriptions filled at the remote site must be distinguished on records from those filled at the central pharmacy;

(c) Daily reports must be separated for the central pharmacy and the remote site, but must be maintained at the central pharmacy;

(d) A pharmacist must be able to generate labels from the central pharmacy;

(e) All prescriptions dispensed at the remote site must have a label that meets the labeling requirements; and

(f) The interactive computer, audio, and video must be checked daily at both sites, and the remote site must be closed if any of the interactive computer, audio, or video malfunction, unless a pharmacist is physically present at the remote site.

(5) A pharmacist at the central pharmacy must approve each prescription before it leaves the remote site with the following understanding:

(a) Dispensing is considered to be done at the central pharmacy;

(b) Both the pharmacist's and the certified pharmacy technician's initials must appear on the fill screen, patient profile, and label;

(c) A pharmacist shall compare the prescription vial, drug dispensed, and strength via interactive computer, audio, and video links; and

(d) The entire prescription label must be checked for accuracy by a pharmacist via the video prior to dispensing.

(6) Patient counseling must be done by a pharmacist for every prescription dispensed at the remote site, via the interactive audio and video.

(7) Inspection criteria must be included in the policies and procedures for the remote site and the central pharmacy

(8) The remote site may have a prescription inventory only in an automated-dispensing unit which shall not include controlled substances.

(9) There must be policies and procedures in place to ensure the safe and effective distribution of pharmaceutical products and delivery of required pharmaceutical care, including an ongoing review of incident reports and outcomes, with appropriate action taken when necessary to ensure there is no abnormal frequency of errors in dispensing drugs.

(10) The remote site must be locked when the certified pharmacy technician is not present. Only the certified pharmacy technician(s) or pharmacist(s) may have keys to the remote site and the automated dispensing unit.

(11) Only a pharmacist may refill the automated dispensing unit with properly-labeled vials including name of medication, strength, quantity, manufacture name, lot number, and expiration date.

(12) The pharmacist at the central pharmacy shall be able to view the following areas of the remote site:

(a) Computer system;

(b) Automatic dispensing unit;

(c) Patient counseling area; and

(d) Workstation area.

(13) Input of a prescription shall be entered at the central pharmacy as follows:

(a) New prescriptions may be received at the central pharmacy in writing, by facsimile, or via phone from the practitioner; and

(b) A certified pharmacy technician at the remote site must fax a new prescription to the central pharmacy to be entered. The original prescription shall be delivered to the central pharmacy within seven (7) days.

(14) Inspection of the remote site shall be completed before it is authorized to open.

(15) The name of every certified pharmacy technician working at a remote site shall be disclosed in writing to the board by the pharmacist in charge at the central pharmacy upon initial application for a permit, or upon renewal of the permit, or within ten (10) days of an employment change at the remote site.

MARK EDWARDS, President

APPROVED BY AGENCY: July 11, 2005

FILED WITH LRC: July 11, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005 at 10 a.m., at the board's office, 23 Millcreek Park, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky, phone (502) 573-1580, fax (502) 573-1582.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes requirements for pharmacies utilizing telehealth to employ remote dispensing into their pharmacy services.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.310.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations when a licensee wishes to utilize telehealth to deliver pharmacy services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will delineate the requirements for pharmacies that desire to utilize telehealth to employ remote dispensing into the pharmacy services they offer the public.

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

(a) How the amendment will change this existing administrative regulation: Not applicable because this is a new administrative regulation

(b) The necessity of the amendment to this administrative regulation: Not applicable because this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable because this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than 10 pharmacies annually 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: Pharmacies will be able to offer pharmacy services to patients in underserved areas.

(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 licensees.

(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 licensees in the class.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Administrative Regulation)

201 KAR 8:225. Credentialing of dental license.

RELATES TO: KRS 313.045
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: Sets forth requirements and qualifications for dentists not licensed in this state to qualify for licensure through credentialing.

Section 1. All applicants presented for credentialing must meet provisions as stated in KRS 313.045.

Section 2. All applicants for dental credentialing must have passed a state or regional clinical licensure exam.

Section 3. All applicants for dental credentialing must be current in continuing dental education within the previous twenty-four (24) months from submission of application.

Section 4. All applicants for dental credentialing must have a letter of verification, verifying licensure from all states or territories of the U.S. or District of Columbia where the applicant has ever held or currently holds a dental license.

Section 5. All applicants for dental credentialing must show proof of successfully passing dental National Boards I & II.

Section 6. All applicants for dental credentialing must appear before the credentialing committee of the board for an interview to review all credentials of the applicant before any board action on the application can take place.

SUSAN B. FEELEY, DDS, President
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administration regulation amendment shall be held on August 29, 2005, at 10 am, at the Kentucky Board of Dentistry, located at 10101 Linn Station Road Ste 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. 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 amendment. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Munsie

(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This new administrative regulation sets forth requirement for dentists to be licensed in Kentucky by credentials.

(b) The necessity of this new administrative regulation amendment: Guidelines for credentialing of dentists is necessary for the Kentucky Board of Dentistry to implement the dental laws.

(c) How this administrative regulation amendment conforms to the content of the authorizing statutes: This new administrative regulation amendment meets the statutory requirements in KRS 313.220(4) by establishing guidelines to credentialing dentists.

(d) How this administrative regulation amendment currently assists or will assist in the effective administration of the statutes: This new administration regulation amendment will provide guidelines for credentialing dentists.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation amendment: This administrative regulation amendment will affect approximately 15 to 20 dentists that will

apply for dental credentials per year.

(4) Provide an assessment of how the above group or groups impacted by either the implementation of this administrative regulation amendment, if new, or by the change, if it is an amendment: Dentists would be expected to follow the recommendations as outlined in order to become a dentist in the state of Kentucky.

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

(a) Initially: Anticipate no additional costs for the board

(b) On a continuing basis. The cost is already incorporated into staff descriptions.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation amendment: The present board funds will be used to enforce this regulation amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation amendment, if new, or by the change, if it is an amendment. Present board funds will be used to implement this amendment.

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

(9) TIERING: Is tiering applied? Yes, this administrative regulation amendment will be applied to dentists as it relates administrative regulation amendment to the existing KRS Chapter 313 and KAR Title 201 pertaining to dentists.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Administrative Regulation)

201 KAR 8:265. Credentialing of dental hygiene license.

RELATES TO: KRS 313.303
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: Sets forth requirements and qualifications for dental hygienists not licensed in this state to qualify for licensure through credentialing.

Section 1. All applicants presented for credentialing shall meet provisions as stated in KRS 313.303.

Section 2. All applicants for dental hygiene credentialing shall have passed a state or regional clinical licensure exam.

Section 3. All applicants for dental hygiene credentialing shall show proof of being current in continuing dental education within the previous twenty-four (24) months from submission of application.

Section 4. All applicants for dental hygiene credentialing shall have a letter of verification, verifying licensure from all states or territories of the U.S. or District of Columbia where the applicant has ever held or currently holds a Dental Hygiene License.

Section 5. All applicants for dental hygiene credentialing shall show proof of successfully passing dental hygiene national boards.

Section 6. All applicants for dental hygiene credentialing shall appear before the credentials committee of the board for an interview to review all credentials of the applicant before any board action on the application can take place.

SUSAN B. FEELEY, DDS, President
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administration regulation amendment shall be held on August 29, 2005, at 10 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road Ste 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22nd, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. 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 amendment. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Munsie

(1) Provide a brief summary of:

(a) What this administrative regulation amendment does: This new administrative regulation sets forth requirements for dental hygienists to be licensed in Kentucky by credentials.

(b) The necessity of this administrative regulation: Guidelines for credentialing of dental hygienists is necessary for the Kentucky Board of Dentistry to implement the dental hygiene laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation meets the statutory requirements in KRS 313.270(2) by establishing guidelines to credentialing dental hygienists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administration regulation will provide guidelines for credentialing of dental hygienists.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation amendment: This new administrative regulation will affect approximately 15 to 20 dental hygienists that will apply for dental hygiene credentials per year.

(4) Provide an assessment of how the above group or groups impacted by either the implementation of this administrative regulation amendment, if new, or by the change, if it is an amendment: Dental hygienists would be expected to follow the guidelines as outlined in order to become a dental hygienist in the state of Kentucky.

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

(a) Initially: Anticipate no additional costs for the board.

(b) On a continuing basis: The cost is already incorporated into staff descriptions.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation amendment: The present board funds will be used to enforce this new administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation amendment, if new, or by the change, if it is an amendment: Present board funds will be used to implement this new administrative regulation.

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

(9) TIERING: Is tiering applied? Yes, this new administrative

regulation will be applied to dental hygienists as it relates administrative regulation amendment to the existing KRS Chapter 313 and KAR Title 201 pertaining to dental hygienists.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Repealer)

301 KAR 1:021. Repeal of 301 KAR 1:020, 1:040, 1:056, 1:070, 1:075, and 1:090.

RELATES TO: KRS 150.010, 150.120, 150.025, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.620
STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to promulgate regulations regarding the taking of wildlife. This administrative regulation repeals 301 KAR 1:020, 1:040, 1:056, 1:070, 1:075, and 1:090. These administrative regulations are no longer necessary as 301 KAR 1:410, Nontraditional methods of taking fish, contains procedures and methods permitted for taking fish contained in the above referenced administrative regulations

Section 1. The following administrative regulations are hereby repealed:
(1) 301 KAR 1:020, Snagging;
(2) 301 KAR 1:040, Skin and scuba diving prohibited, exceptions;
(3) 301 KAR 1:056, Sport fishing trotlines, jugging, and set lines;
(4) 301 KAR 1:070, Rough fish from backwaters;
(5) 301 KAR 1:075, Gigging, grabbling, snagging, tickling and noodling; and
(6) 301 KAR 1:090, Bow fishing.

W. JAMES HOST, Secretary
JON GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 12, 2005 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2005, at 10:30 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 40601. 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24 Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270 ext. 206, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cara Jarrell
(1) Provide a brief summary of:
(a) What the administrative regulation does: To repeal 301 KAR 1:020, 1:040, 1:056, 1:070, 1:075, and 1:090 that are now incorporated into the new regulation 301 KAR 1:410 entitled Taking of fish by other than traditional fishing methods.
(b) The necessity of the administrative regulation: To repeal six existing regulations that have been combined into 1 new regulation, 301 KAR 1:410. The combination of the 6 regulations into 1 new regulation will assist in consistency and reference.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to promulgate regulations regarding the taking of wildlife. KRS 13A.310(1) authorizes the department to repeal regulations if it is desired that it no longer be effective. The 6 regulations that are being repealed have been combined into 1 new regulation that will assist in consistency and reference.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purpose of KRS 13A.310(1) where an administrative regulation shall be repealed if it is desired that it no longer be effective. The regulations are no longer needed as a result of being combined into a single new regulation, 301 KAR 1:410.
(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: A new regulation has been created as a result of combining 6 regulations into 1 new regulation that will assist in consistency and reference. As a result, the 6 old regulations need to be repealed.
(b) The necessity of the amendment to this administrative regulation: The 6 old regulations need to be repealed as they are now combined into 1 new regulation.
(c) How does the amendment conform to the authorizing statutes: See (c) above.
(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 that use nontraditional fishing methods.
(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: Persons using nontraditional fishing methods will not be affected as the new regulation combines 6 regulations into 1 new regulation that will assist in consistency and reference.
(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 new administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this new 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 current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of the 6 regulations that are to be repealed and that were combined into the new regulation including water patrol.
(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 new 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 as this new regulation that resulted because of combining 6 old regulations treat people using nontraditional fishing methods equally.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 1:410. Taking of fish by other than traditional fishing methods.

RELATES TO: KRS 150.010, 150.025, 150.025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.620, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.025(1), 150.175, 150.400, 150.440, 150.445, 150.470
NECESSITY, FUNCTION, AND CONFORMITY: KRS

150.025(1) authorizes the department to establish methods of taking fish. This administrative regulation establishes the procedures for taking sport and commercial fish populations by other than traditional fishing methods such as: snagging; underwater spearing, and "scuba diving"; sport fishing trot lines, jugging and setlines; the taking of rough fish from backwaters; gigging, grabbing or snagging, and bow fishing.

Section 1. Definitions. (1) "Bow and arrow" means a:
(a) Longbow;
(b) Compound bow; or
(c) Crossbow.
(2) "Cull" means to replace a fish in your daily creel limit with another fish of the same species
(3) "Jugging" is defined in KRS 150.010(15).
(4) "Setline" is defined in KRS 150.010(34).
(5) "Snagging" is defined in KRS 150.010 (35).
(6) "Sports Fishing Trotlines" is defined in KRS 150.010(36).

Section 2. Skin and Scuba Diving and Underwater Spear Fishing. (1) Skin or scuba diving is prohibited in all lakes owned by the Department of Fish and Wildlife Resources, except as stated in subsections (2) and (3) of this administrative regulation.

(2) Skin or scuba diving may be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local wildlife and boating officer assigned to the specific body of water in which the diving is to take place.

(3) Skin or scuba diving is permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning.

(4) Underwater spearing of fish with hand held spear or mechanically-propelled spear is legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level. A participant in this type of sport must be submerged in the water in which spearing takes place. Only rough fish shall be taken and an appropriate fishing license is required. The daily limit is fifteen (15) rough fish of which not more than five (5) shall be catfish (aggregate).

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Tagging and Checking.

(a) Each sport fishing trotline, jug line or setline shall be permanently labeled or tagged with the name and address of the person using it.

(b) All sport fishing trotlines, jug lines, and setlines shall be baited, checked and all fish removed at least once every twenty-four (24) hours. The fisherman shall remove these devices from the water, from the bank, or from tree limbs when he or she has finished fishing. Trotlines, setlines, or jug lines that are not properly labeled, remain unchecked, or unbaited for over twenty-four (24) hours may be confiscated.

(2) Fishing requirements.

(a) No sport fisherman shall use more than two (2) sport fishing trotlines, twenty-five (25) setlines, or fifty (50) jug lines per boat.

(b) Sport fishing trotlines shall be set at least three (3) feet below the water's surface and contain no more than fifty (50) single or multibarbed hooks placed no closer together than eighteen (18) inches.

(c) No jug line or setline shall have more than one (1) single or multibarbed hook.

(d) An appropriate fishing license is required.

(3) Closed Waters. No sport fishing trotline, jugs, or setlines shall be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam.

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge.

(c) In any lake less than 500 surface acres owned or managed by the department, except those specifically listed in subsection (3)(e) of this section.

(d) In the following areas of the Ohio River.

1. Smithland Dam downstream to a line perpendicular the end of the outer lock wall.

2. J. T. Meyers downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall.

5. McAlpine Dam downstream to the K&I railroad bridge.

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(e) No sport fishing trotline, jugs, or setlines shall be permitted in lakes under 500 surface acres owned or managed by the department, except the following:

1. Ballard Wildlife Management Area Lakes, Ballard County.

2. Peal Wildlife Management Area Lakes, Ballard County.

3. Swan Lakes Wildlife Management Area Lakes, Ballard County.

Section 4. Rough Fish from Backwaters. (1) The Commissioner of the Department of Fish and Wildlife Resources may designate all wildlife and boating officers and other employees of the Department of Fish and Wildlife Resources to establish and supervise areas for the taking of all types of rough fish as described in 301 KAR 1.060 from the backwaters, or overflow areas of streams, rivers and reservoirs as long as the backwater, or overflow area is connected with the stream or reservoir. When the backwater is no longer connected with the stream or reservoir the landowner may, under the supervision of the wildlife and boating officer, direct the taking of rough fish in accordance with this administrative regulation. The wildlife and boating officer or other designated officials are authorized to determine the exact dates and time when the taking of these rough fish shall commence and cease.

(2) Fish may be taken in the above-described areas by any method except by the use of poison, electrical devices or firearms. If nets and seines are used, they must be appropriately tagged and the user must have an appropriate commercial fishing license.

(3) No wildlife and boating officer or designated official shall permit the taking of any fish from any slough, or backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) All persons engaged in this type of fishing shall have a fishing license.

Section 5. Gigging, Grabbing or Snagging, Tickling, and Noodling. (1) Fish may be taken by snagging using a single hook or one (1) treble hook except as provided in subsection (2) of this section.

(2) In the Green River and its tributaries and the Rolling Fork River and its tributaries, five (5) hooks, either single or treble hooks, may be used.

(3) Methods of gigging and snagging. A person may gig or snag from the stream or lake banks, but shall not snag or gig from a boat or platform, except that gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

(4) Seasons. Gigging and snagging are permitted February 1 through May 10 except as provided in subsection (8) of this section. Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on and the gigger shall gig while supported by the ice.

(5) Creel limits.

(a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Dam and in the Cumberland River below Barkley Dam as provided in subsections (7) and (8) of this section, is unlimited with the exception that only two (2) paddlefish (no cull) may be taken daily statewide. Harvest of sport fish by gigging and snagging is prohibited statewide except as provided for in subsection (8) of this section.

(b) Daily creel limits in the Tennessee River below Kentucky Dam open to snagging and in the Cumberland River below Barkley

Dam open to both gigging and snagging shall be eight (8) fish, of which no more than eight (8) can be paddlefish. Harvest of sport fish is permitted by snagging only in the Tennessee River as provided by subsection (8) of this section.

(6) Areas where gigging and snagging are permitted. Gigging or snagging for rough fish is permitted night and day in lakes and streams, except where specifically prohibited in subsections (3), (4), (7), and (8) of this section.

(7) Gigging and snagging is specifically prohibited in the following lakes, streams and their tributaries, except as provided in subsection (8) of this section.

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County.

(c) The Rough River, below Rough River Lake Dam Downstream to Highway 54 Bridge in Breckinridge and Grayson Counties.

(d) Cave Run Lake.

(e) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(f) Within 200 yards of any dam on any stream.

(g) Gigging and snagging are not permitted in streams stocked with trout. These include statewide streams, national forest streams, seasonal catch and release trout streams and the Fort Campbell and Fort Knox military reservations as defined annually in the Kentucky Sport Fish and Boating Guide incorporated by reference in this administrative regulation.

(8) Snagging shall be permitted in the Tennessee River below Kentucky Dam.

(a) Season and area.

1. Snagging is permitted in the Tennessee River between the Kentucky Lake dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.

2. From June 1 through December 31, snagging is only permitted from sunset to sunrise (local time) between the Kentucky Lake dam and the US 62 Bridge.

3. Snagging is not permitted year round in the Tennessee River from the new US 62 Bridge to the I-24 Bridge.

4. Snagging is permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River.

5. Snagging is not permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the US 62 Bridge.

(b) Equipment.

1. A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.

2. The rod shall be equipped with line, guides, and a reel.

3. No more than one (1) single or treble hook may be attached to the line.

(c) Creel limit.

1. All fish snagged shall be kept (no cull), except for shad or herring.

2. The daily creel limit shall be an aggregate of eight (8) fish of which no more than eight (8) fish can be paddlefish and;

3. The daily creel limit shall not exceed the daily creel limit for any sport fish in which the creel limit is under eight (8) or for any sport fish species whose creel limit is over eight (8).

4. Snagging must cease once a daily limit for any sport fish is obtained.

(9) All game fish caught by gigging or snagging, except those taken as permitted in subsection (8)(c) of this section, in the Tennessee River below Kentucky Dam shall be returned to the water immediately, regardless of condition.

(10) Tickling and noodling (hand grabbing) season for rough fish shall be June 1 to August 31 during daylight hours. Tickling and noodling shall be permitted in all waters. The daily creel limit for tickling and noodling shall be fifteen (15) fish of which not more that five (5) shall be catfish (aggregate).

(11) Kentucky Sport Fish and Boating Guide is incorporated by reference.

Section 6. Bow Fishing (1) A person shall not take with a bow and arrow:

(a) Sport fish, as listed in 301 KAR 1.060, Section 1.

(b) Fish from the waters listed in subsection (7) of this section; except in the Cumberland River below Barkley Dam where bow fishing is permitted beginning 200 yards below the dam.

(c) More than five (5) catfish (aggregate) and two (2) paddlefish daily.

Section 7. Incorporation by Reference. (1) The annual Kentucky Sport Fish and Boating Guide is incorporated by reference

(2) This material may by 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, 8 a.m. to 4.30 p.m.

W. JAMES HOST, Secretary
DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 12, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 5 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 August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cara Jarrell, Attorney, Kentucky Commerce Cabinet, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270, ext. 206, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cara Jarrell

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes procedures and limits for the taking of fish by other than traditional rod and reel fishing methods.

(b) The necessity of the administrative regulation: To protect the sport and commercial fish populations by establishing limits for these nontraditional fishing methods.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to promulgate administrative regulations necessary to establish seasons and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by setting seasons and by limiting the numbers of fish that may be taken from Kentucky waters by nontraditional fishing methods. This will ensure the conservation of fish species.

(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 is a clean up and a combination of 5 previous regulations into one regulation. This amendment also reduces the number of setlines and jug lines that anglers can use. The amendment also established a statewide 2 fish paddlefish limit for gigging and snagging with the exception that below Kentucky and Barkley Dams the paddlefish creel limit is 8 fish per day. Bow

anglers will now be allowed to take paddlefish (2 fish/day) and spear anglers (scuba diving) will have a 5 fish/day creel limit on catfish (aggregate) to conform with other similar method

(b) The necessity of the amendment to this administrative regulation The amendment is a clean up and combination of 5 regulations into 1 regulation. The amendment is needed to effectively manage the fisheries resources of Kentucky by reducing number of set lines and jugs that anglers can use and establishes creel limits on paddlefish both statewide and in the Tennessee River below Kentucky Dam and in the Cumberland River below Barkley Dam.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(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 fish the waters of the commonwealth using these non-traditional fish methods.

(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: Anglers will be minimally affected. The amendments to this administrative regulation will not affect Kentucky anglers negatively The paddlefish creel limit will help insure that this species of fish is not over harvested and conforms with creel limits established by bordering states along the Ohio River.

(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 current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations including water patrol.

(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, because all people who fish the waters of Kentucky using non-traditional fishing methods will be treated the same.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Police
(New Administrative Regulation)

502 KAR 13:010. Certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C.A. 926C, for honorably-retired Kentucky elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C.A. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired Kentucky elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C and authorizes the Kentucky State Police to promulgate administrative regulations to implement the certification provisions.

Section 1. Definitions. (1) "Peace officer" is defined by KRS 446.080(24) and 61.365.

(2) "Honorably retired" means a Kentucky elected or appointed peace officer who:

(a) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability, and

(b) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest, and

(c) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more; or

(d) Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(e) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(f) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualification for active law enforcement officers to carry firearms;

(g) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(h) Is not prohibited by federal law from receiving a firearm.

(3) "Applicant" means an honorably retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C.

Section 2. Application. An applicant may make application to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C by completing the "Commonwealth of Kentucky: Carry Concealed Deadly Weapons – LEOSA Application for License" and submitting it to the Kentucky State Police through the Sheriff's Department of the county in which the applicant resides. No fee shall be required for the application.

Section 3. Accompanying Documents. The following documents shall accompany an application:

(1) Peace Officer Range Qualification Certification - LEOSA (KSP Form Number 123).

(2) Certification of Law Enforcement Retirement - LEOSA (KSP Form Number 124).

(3) Any other document, photograph, or information deemed necessary by the Kentucky State Police to enable it to adequately evaluate the eligibility of the applicant for a certification to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C.

Section 4. Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:

(1) From a safe position; and

(2) Without receiving any assistance in holding, aiming, or firing from the instructor or any other person;

(3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 5. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 6. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 4(2).

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an

applicant who:

(a) Does not follow the orders of the firearms instructor;

(b) In the judgment of the firearm instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or

(c) Fails to hit the silhouette portion of a target with a majority of the twenty (20) rounds without assistance in holding, aiming, or firing the firearm from the instructor or another person.

(5) If the applicant successfully completes the live-firing exercise, within five (5) working days after the completion of the live-firing exercise, the firearms instructor shall mail or deliver the completed "Peace Officer Range Qualification Certification- LEOSA" (KSP Form Number 123) showing the applicant's successful completion of the live-firing exercise to the Kentucky State Police, Criminal Identification & Records Branch, CCDW Section, 1250 Louisville Road, Frankfort, Kentucky 40601.

Section 7. Issuance and Expiration of License. Upon receipt of the documentation required by Sections 3 and 6 of this administrative regulation, the Kentucky State Police shall issue a license confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C. A license shall expire on the date listed on the identification card described in Section 8 of this administrative regulation. Any license holder wishing to renew their license must apply and be approved in the manner described in this administrative regulation for first time applicants.

Section 8. Identification. If an applicant successfully meets the criteria established by this administrative regulation to carry a concealed deadly weapon, the Kentucky State Police shall provide photographic identification confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C.

(1) The front of the photographic identification card shall include the following information:

(a) Name of license holder.

(b) Address of license holder.

(c) Date of Birth of license holder.

(d) Law enforcement agency license holder retired from.

(e) Expiration date of license.

(f) LEOSA license identification card number.

(2) The back of the photographic identification card shall include the following statement: The Commonwealth of Kentucky hereby certifies that the license holder identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004 (Pub. L 108-277) and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the standards established by the commonwealth for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Section 9. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Commonwealth of Kentucky: Carry Concealed Deadly Weapons - LEOSA Application for License".

(b) "Peace Officer Range Qualification Certification - LEOSA" (KSP Form Number 123).

(c) "Certification of Law Enforcement Retirement - LEOSA" (KSP Form Number 124).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification & Records Branch, Kentucky State Police, at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK L. MILLER, Commissioner
LT. GOVERNOR STEVE PENCE, Secretary
APPROVED BY AGENCY: July 14, 2005
FILED WITH LRC: July 15, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2005 at 3 p.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by August 15, 2005. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Brenn Combs, Justice Cabinet, Department of Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brenn Combs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the provisions regarding certification of honorably retired Kentucky elected or appointed peace officers to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C.A. 926C.

(b) The necessity of this administrative regulation: SB 142 of the 2005 RS of the GA created new sections of KRS Chapter 237, 237.138, 237.140 and 237.142, providing for the certification of honorably-retired Kentucky elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C. KRS 237.140 requires the Kentucky State Police to promulgate administrative regulations to implement the 18 U.S.C.A. 926C certification provisions of the new statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions under which honorably retired Kentucky elected or appointed peace officers are certified to carry a concealed deadly weapon pursuant to 18 U.S.C.A. 926C.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Justice Cabinet, Department of State Police and informs the public of the requirements and conditions under which the certification required by 18 U.S.C.A. 926C may be obtained.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain 18 U.S.C.A. 926C certification to carry a concealed deadly weapon.

(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: Honorably retired Kentucky elected or appointed peace officers will be required to comply with this regulation and state and federal law in order to obtain 18 U.S.C.A. 926C certification.

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

(a) Initially: KRS 237.140 provides that the costs of certification shall be paid for by moneys generated by the Concealed Deadly Weapon License Program and collected by the Department of State Police.

(b) On a continuing basis: Costs of certification shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs of certification shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(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: See response to 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a)

(9) TIERING: Is tiering applied? No, the process is applied equally to all that receive the service.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Labor-Management Relations and Mediation
(New Administrative Regulation)

803 KAR 3:060. Procedures for electing and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments.

RELATES TO: KRS 67A.6905, 67C.408

STATUTORY AUTHORITY: KRS 67A.6905(3), 67C.408(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 67A.6905(3) requires the Department of Labor to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers and firefighters employed by urban-county governments. KRS 67C.408(3) requires the department to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers employed by consolidated local governments. This administrative regulation establishes procedures for electing and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments.

Section 1. Definitions. (1) "Appropriate Collective Bargaining Unit" means a group of police officers or firefighters, as determined by the department considering the factors outlined in KRS 67A.6905(2) and KRS 67C.408(2), which is the subject of a petition for election.

(2) "Commissioner" is defined in KRS 336.010(1) means the Commissioner of the Department of Labor, Environmental and Public Protection Cabinet, created by KRS 12.020.

(3) "Cross petition for election" means a petition authorized by KRS 67A.6905(1) or 67C.408(1) seeking to intervene in a pending petition to elect an exclusive representative of an appropriate collective bargaining unit.

(4) "Cross petitioner" means a person, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a cross petition for election.

(5) "Department" is defined in KRS 336.010(2) means the Department of Labor, Environmental and Public Protection Cabinet, created by KRS 12.020, which replaced the Labor Cabinet.

(6) "Exclusive representative" is defined in KRS 67A.6901(2) and 67C.400(3).

(7) "Labor Organization" is defined in KRS 67A.6901(4) and 67C.400(2).

(8) "Notice of Election" means a notice prepared by the department containing the details of an election for an exclusive representative, including the appropriate collective bargaining unit; voting eligibility criteria; date, hours, method, and location of the election; sample ballot; and effect of the vote.

(9) "Petition for election" means a petition authorized by KRS 67A.6905(1) or 67C.408(1) requesting an election for an exclusive representative of an appropriate collective bargaining unit.

(10) "Petitioner" means a person, group, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a petition for election.

Section 2. Petition for Election. (1) An original and three (3) copies of a petition for election shall be filed with the department and shall include the following:

(a) The petitioner's name, address, and affiliation, if any, along with the name and telephone number of the petitioner's principal representative,

(b) The name and address of the urban-county or consolidated local government employer, if the employer is not the petitioner, along with the name and telephone number of the employer's principal representative;

(c) A description of the claimed appropriate collective bargaining unit specifying the following:

1. The classifications of employees included and excluded;

2. The approximate number of employees;

3. The interests the employees have in common regarding wages, hours, and other working conditions; and

4. The history of collective bargaining among employees;

(d) The name and address of any known labor organization that represents police officers or firefighters in the claimed appropriate collective bargaining unit;

(e) A clear and concise statement setting forth the issues raised by the petition, including the proof required by KRS 67A.6905(1)(a) through (b) or 67C.408(1)(a) through (b);

(f) Any other relevant facts; and

(g) The petitioner's signature and a declaration, under penalty of perjury, by the person signing the petition that the contents of the petition are true and correct to the best of the person's knowledge.

(2) The party filing a petition, cross petition, or other document permitted or required by this administrative regulation shall serve a copy on all affected parties.

(3) Within five (5) days of the date a petition for election is filed, the department shall notify in writing any affected party identified in the petition.

Section 3. Cross Petition for Election. (1) A crosspetition for election shall be filed within fifteen (15) days of the date the petition for election is filed with the department.

(2) A crosspetition for election shall be in the same form and contain the same information required of a petition for election outlined in Section 2 of this administrative regulation.

(3) Within five (5) days of the date a cross petition for election is filed, the department shall notify in writing any affected party identified in the cross petition for election.

Section 4. Duty to Furnish Information and Cooperate. (1) After a petition and any cross petition are filed, the department may direct the petitioner, cross petitioner, or any other affected party to submit additional information the department deems relevant to an investigation of the issues raised by the petition or cross petition, as required by KRS 67A.6905(1) and 67C.408(1).

(2) In determining the appropriate collective bargaining unit, as required by KRS 67A.6905(2) and 67C.408(2), the department may direct the urban-county or consolidated local government employer to furnish a current, alphabetized list of employees and job classifications included or excluded from the appropriate collective bargaining unit claimed in the petition.

(3) All affected parties shall cooperate with the department and each other in every aspect of the election process. This obligation includes submitting all required and requested information, making a good faith effort to agree on procedural matters, and participating fully in conferences. Failure to cooperate may result in the department taking appropriate action, including dismissing a petition or denying intervention.

Section 5. Election Determination and Notification. (1) Within forty-five (45) days of the date a petition for election is filed, the department shall evaluate the petition and any cross petition for

validity. The department may extend the time for evaluation up to thirty (30) days if it requests additional information from the petitioner, cross petitioner, or any other affected party, as outlined in Section 5 of this administrative regulation.

(2) If the department determines that a petition is valid, it shall establish the appropriate collective bargaining unit, including voter eligibility, and notify in writing all affected parties that an election shall be held. If the department determines that a petition is invalid, the petition shall be dismissed.

(3) If the department determines that a cross petition for election is valid, it shall notify in writing all affected parties that the cross petitioner shall be allowed to intervene. If the department determines that a cross petition is invalid, the cross petition shall be dismissed, and the cross petitioner shall not be allowed to intervene.

(4) Parties shall make a good faith effort to enter into agreements on the procedural conduct of the election, including the date, hours, method, and location. If the parties cannot agree, the department shall determine the details of the election.

(5) Within fifteen (15) days of the date the department notifies the parties in writing whether the petition and any cross petition are valid, it shall issue a notice of election.

(6) At least ten (10) days prior to the date of the election, the affected urban-county or consolidated local government employer shall either post the notice of election in a conspicuous place available to all affected employees or distribute the notice to all affected employees in a manner by which employment notices are normally distributed.

Section 6. Election Procedures. (1) The department shall supervise all elections.

(2) Voting shall be by secret ballot.

(3) The cost of printing and mailing ballots, if any, shall be borne equally by those whose names appear on the ballot.

(4) The petitioner shall appear first on the ballot. Cross petitioners shall appear in rank according to the date and time the department receives each cross petition. "No representative" or "none" shall be last on the ballot.

(5) If there is no pending cross petition, a petitioner may withdraw its request for an election at any time by filing a notice in writing with the department. If there is a valid cross petition, an election shall be held; however, either the petitioner or cross petitioner may remove its name from the ballot at any time prior to the date the election is held.

(6) Parties may choose equal numbers of observers to represent them at all polling locations, if elections are held on site, and at the ballot counting, subject to the department's approval. Observers for the employer shall not be supervisors of any employees in the affected collective bargaining unit.

(a) Each party shall file a written list of its proposed observers with the department at least ten (10) days prior to an election.

(b) Written objections to observers, stating specific reasons, shall be filed with the department within five (5) days after service of the list.

(c) The department's decisions on observers are final and binding.

(7) If the election is conducted on site, the following procedures shall apply:

(a) Polling locations shall be clearly marked. A private area or booth shall be available at each location for voters to mark their ballots in secret.

(b) The parties shall not distribute or post campaign literature within twenty-five (25) feet of the entrance of any polling site during polling hours.

(c) Cameras, video equipment, and similar means of surveillance shall be prohibited within the actual polling area while employees are voting.

(d) The department representative shall examine the ballot boxes in the presence of the authorized observers immediately prior to opening the polls. When the polls are opened, each ballot box shall be sealed, except for one (1) opening on the top for voters to insert their ballots.

(e) Employees shall present appropriate identification to the department representative to vote. A voter shall make a cross or check in the circle or block on the ballot corresponding to the voter's choice. If the voter inadvertently spoils a ballot, he or she may return the ballot to the department representative, who shall give the voter another ballot. The spoiled ballot shall be placed in a spoiled ballot envelope; the department representative shall seal the envelope; the authorized observers shall initial the envelope; and the department representative shall deposit the envelope in the ballot box.

(f) A voter shall fold his or her ballot so that no part of its face is exposed and, after leaving the voting area or booth, shall deposit the ballot in the ballot box.

(g) The department representative may privately assist any voter who, due to physical or other disability, is unable to mark his or her ballot.

(h) The department representative or any authorized observer may challenge, for good cause, the eligibility of any voter. The observer shall state the reason for the challenge. The department representative shall challenge any voter whose name does not appear on the eligibility list. A challenged voter shall be permitted to vote in secret. The department representative shall place the challenged voter's ballot in a challenged ballot envelope, seal the envelope, and mark the voter's name and the reason for the challenge on the outside of the envelope. The authorized observers shall initial the envelope, and the department representative shall deposit the envelope in the ballot box.

(i) If the department representative stops the election for any reason, he or she shall completely seal the ballot boxes in the presence of the authorized observers. The ballot boxes shall remain in the custody of the department representative until voting resumes.

(j) Upon conclusion of the voting, the department representative shall completely seal the ballot boxes, which shall be initialed by the authorized observers, and bring them to a predetermined location. All ballot boxes shall be opened at the time they are going to be counted, and the ballots shall be commingled for tallying.

(k) Ballots shall be tallied in accordance with the procedure established in Section 7 of this administrative regulation.

(8) If the election is conducted by mail, the following procedures shall apply:

(a) The department shall mail a packet containing a ballot; a ballot envelope; a pre-printed employee identification label with signature line; a pre-addressed, stamped, return envelope; and instructions to each eligible voter.

(b) The instructions shall advise the voter to mark the ballot without identifying himself or herself; place the ballot in the ballot envelope; seal the ballot envelope and place it in the return envelope; seal the return envelope; place the preprinted employee identification code label with signature line across the seal; sign the label; and mail the envelope. The instructions shall also advise the voter of the date by which ballots shall be received in order to be counted.

(c) Mail ballots shall remain unopened in their return envelopes until the date set for tallying. On the date set for tallying, the department representative and the authorized observers may challenge any ballots prior to the opening of the return envelopes. The voter's name, signature, and employee identification code on the label covering the outside envelope seal shall be used to determine if the voter is an eligible employee. Challenged ballots shall be handled in accordance with Section 7 (3) of this administrative regulation.

(d) All ballots that have not been challenged shall be removed from their return envelopes and commingled prior to tallying. The ballots shall be tallied in accordance with Section 7 of this administrative regulation.

Section 7. Tallying Ballots. (1) After all elections, the department shall tally ballots in the presence of authorized observers.

(2) Ballots which are defaced, torn, or marked in such a manner that they do not indicate the voter's clear intent shall be void and not counted.

(3) Challenged ballots shall be handled as follows:

(a) The department representative shall impound the challenged ballots, which shall be considered only if they could be determinative of the outcome of the election.

(b) If challenged ballots could affect the outcome of the election, the department representative shall examine each challenged ballot, consult the established eligibility criteria, and decide whether the ballot is legitimate and shall be counted.

(4) Representation shall be determined by the majority of the valid ballots cast.

(5) If there are only two (2) choices on the ballot, each of which receives fifty (50) percent of the vote, the department shall certify that a majority of the eligible employees have not manifested a desire to be represented by the labor organization.

(6) If there are three (3) or more choices on the ballot (two (2) or more labor organizations and "no representation") and no choice receives a majority of the valid ballots cast, the department shall conduct a runoff election between the two (2) choices that received the most votes, as provided in KRS 67A.6905(3), 67C.408(3), and Section 8 of this administrative regulation.

(7) The department shall preserve and protect all ballots and election records for at least sixty (60) days from the date results of the election have been certified.

Section 8. Runoff Election. (1) A runoff election prescribed in KRS 67A.6905(3) or 67C.408(3) shall not be held until the department or commissioner has ruled on any challenges to ballots and objections to the election.

(2) In order to vote in a runoff election an employee shall have been eligible to vote in the original election and still be in the appropriate collective bargaining unit on the date of the runoff election.

(3) The parties shall follow the procedures in a runoff election established for elections in Section 6 of this administrative regulation.

Section 9. Certification of Election Results If challenged ballots are insufficient in number to affect the results, no runoff election is to be held, and no timely objections are filed as provided in Section 9 of this administrative regulation, the department shall promptly certify the results of the election and notify all affected parties in writing.

Section 10. Objections to Election. (1) Within five (5) days after receiving the vote tally, any party to the election may file objections to the conduct of the election.

(a) Objections shall be in writing and contain a brief statement of facts upon which the objections are based.

(b) An original of the objections, containing the declaration required by Section 2(1)(g) of this administrative regulation, and three (3) copies shall be filed with the commissioner.

(c) The party filing objections shall serve a copy of the objections upon each of the other parties at the same time it files with the commissioner.

(2) Within ten (10) days after the objections are filed, the objecting party shall submit to the commissioner, with copies served upon all parties, a statement of material facts and issues, including a summary of evidence supporting the objections.

(3) Within ten (10) days of the date the statement of material facts and issues is filed with the commissioner, an affected party may file a response.

(4) The commissioner or designated representative shall promptly investigate the allegations, conduct a conference with all affected parties, and issue a report within thirty (30) days of receiving the statement of material facts and issues.

(a) If the commissioner finds reasonable cause to believe that the election was not fairly and freely chosen by a majority of the employees in the appropriate collective bargaining unit, he or she shall order a new election and any other corrective action necessary to insure the fairness of the election process.

(b) If the commissioner determines, upon investigation, that the election was freely and fairly chosen by a majority of the employees in the appropriate collective bargaining unit, he or she shall certify the results of the election.

(c) The commissioner's findings regarding the objections are final and binding.

LAJUANA S. WILCHER, Secretary

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 15, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 25, 2005 at 1 p.m. at the Department of Labor, 1047 US Hwy 127 S, Bay 3, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 August 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: Leslie E. Renkey, Director, Labor Legal Division, Office of Legal Services, Environmental and Public Protection Cabinet, 1047 U.S. 127 S., Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-5484.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Leslie E. Renkey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for electing and certifying elections for exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments.

(b) The necessity of this administrative regulation: Elections for exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighters employed by urban-county governments is not currently regulated in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 67A.6905(3) requires the Department of Labor to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers and firefighters employed by urban county governments. KRS 67C.408(3) requires the department to promulgate administrative regulations to facilitate elections for exclusive representatives of police officers employed by consolidated local governments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform persons, groups, labor organizations, urban-county governments, and consolidated local governments how the Department of Labor will conduct elections authorized in KRS Chapters 67A and 67C.

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

(a) How the amendment will change this existing administrative regulation: Not applicable; this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All urban-county and consolidated local governments (currently 1 each); police officers and firefighters employed by urban-county governments; police officers employed by consolidated local governments; and labor organizations representing police officers or firefighters 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 this is an amendment: This

administrative regulation requires parties involved in elections for exclusive representatives of appropriate collective bargaining units will be required to follow procedures outlined by the Department of Labor.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All police officers employed by urban county or consolidated local governments and firefighters employed by an urban county government are treated equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Agent Licensing
(New Administrative Regulation)

806 KAR 9:340. Forms for application, appointment, prelicensing, and continuing education course completion; examination retake, provider, and course approval; filing fee submission, instructor approval, continuing education attendance roster, and certificate of completion; specialty credit insurance producer supplement to license application, rental vehicle license supplemental application, continuing education certificate of completion, rental vehicle managing employee, continuing education certificate of completion, unlicensed employees, and representatives of rental vehicle agent; record correction, and background check request.

RELATES TO: KRS 304.9-080, 304.9-105, 304.9-130, 304.9-140, 304.9-150, 304.9-160, 304.9-190, 304.9-200, 304.3-230, 304.9-270, 304.9-280, 304.9-295, 304.9-320, 304.9-430, 304.9-432, 304.9-480, 304.9-485, 304.9-505(4), 304.9-513, 304.9-705, 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(4), 304.9-230(2), 304.9-295(9), KRS 304.9-430(1), 304.9-485(2), 304.9-513, 304.15-700, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(4) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of viatical settlement providers and viatical settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720.

Section 1. (1) Form CPL-01, "Certificate of Prelicensing Course Completion," is the form that shall be filed with the Office of Insurance by a prelicensing provider for each applicant that has completed a prelicensing course of study.

(2) Form 8301, "Individual Insurance Producer License Application," is the form that shall be filed by an individual applicant with the Office of Insurance to initiate the licensing process for a resident and nonresident individual agent, surplus lines broker, consultant, temporary agent, rental vehicle managing employee, specialty credit managing employee, managing general agent, adjuster, apprentice adjuster, administrator, reinsurance intermediary manager, reinsurance intermediary broker, viatical settlement broker and viatical settlement provider.

(3) Form 8301-BE, "Business Entity License Application," is the form that shall be filed with the Office of Insurance by a business entity applicant to initiate the licensing process for the business entity counterparts of the individual licenses.

(4) Form 8302-AP, "Appointment Form," is the form that shall be filed by an insurer to notify the Office of Insurance that an individual or business entity agent or agency has been appointed to represent the insurer.

(5) Form 8202-TE, "Termination Form," is the form that shall be filed by an insurer with the Office of Insurance to terminate an agent's appointment with an insurer.

(6) Form VS, "Voluntary Surrender," is the form that shall be filed by an agent with the Office of Insurance to surrender his or her license.

(7) Form 8305, "Business Entity Designation or Termination of Designation Form," is the form that shall be filed with the Office of Insurance by a business entity to designate individuals to be authorized to act under the business entity's license and appointments

(8) Form 8307, "Request for Unlicensed Adjuster Activity," is the form that shall be filed with the Office of Insurance by an insurer to give an adjuster that is not licensed in Kentucky temporary authority to adjust catastrophic claims.

(9) Form 8304, "Examination Retake Form," is the form that shall be filed with the Office of Insurance by an applicant who fails an examination or fails to keep an appointment to take an examination to request the opportunity to retake the examination.

(10) Form KYP-01, "Provider Approval Application," is the form that shall be filed by an applicant with the Office of Insurance to request certification as a continuing education or prelicensing provider.

(11) Form CE/PL-100, "Course Approval Application," is the form that shall be filed by a provider with the Office of Insurance to request approval of continuing education and prelicensing courses.

(12) Form KYF-01, "Filing Fee Submission Form" is the form that shall be filed by a provider with the Office of Insurance along with Form CE/PL-100 and Form CE/PL-200. It identifies the title of the course, the identity of the instructor and specifies the applicable filing fee

(13) Form CE/PL-200, "Instructor Approval Application," is the form that shall be filed with the Office of Insurance to request approval of continuing education and prelicensing instructors.

(14) Form CE-300, "Continuing Education Course Attendance Roster," is the form that shall be filed by a certified provider with the Office of Insurance to certify licensees' attendance at a continuing education course.

(15) Form CE-301, "Continuing Education Certificate of Completion," is the form that may be filed with the Office of Insurance to certify licensees' completion of a continuing education course.

(16) Form CA AFF 304, "Affidavit for Exemption from Continuing Education," is the form that shall be filed with the Office of Insurance by an agent that does not intend to sell any new insurance business to maintain his or her license to collect renewal commissions only.

(17) Form 8301-SC, "Specialty Credit Insurance Producer Supplement to License Application," is the form that shall be filed with the Office of Insurance by a specialty credit insurance producer to list the retail stores that are included under the license.

(18) Form 8301-RV, "Rental Vehicle License – Supplementa-

tion Application," is the form that shall be filed with the Office of Insurance by a rental vehicle insurance producer to list the retail stores that are included under the license.

(19) Form CE/RV-302, "Continuing Education Certificate of Completion, Rental Vehicle Managing Employee," is the form that shall be filed with the Office of Insurance to certify the completion of the managing employee's continuing education.

(20) Form CE/RV-303, "Continuing Education Certification of Completion, Unlicensed Employees and Representative of Rental Vehicle Agent," is the form that shall be filed with the Office of Insurance to certify the completion of continuing education by all unlicensed employees

(21) Form 8303, "Record Correction Form," is the form that shall be filed with the Office of Insurance by a licensee to make a change to the licensee's name or address.

(22) Form 8301-BGC, "Background Check Request Form," is the form that shall be filed by an applicant with the Administrative Office of the Courts to request a criminal background check that is required prior to licensing.

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

(a) Form CPL-01, "Certificate of Prelicensing Course Completion (5/2005 edition)";

(b) Form 8301, "Individual Insurance Producer License Application (5/2005 edition)";

(c) Form 8301-BE, "Business Entity License Application (5/2005 edition)";

(d) Form 8302-AP, "Appointment Form (5/2005 edition)";

(e) Form 8302-TE, "Termination of Producer Appointment (5/2005 edition)";

(f) Form VS, "Voluntary Surrender of License (5/2005 edition)";

(g) Form 8305, "Business Entity Designation or Termination of Designation Form (5/2005 edition)";

(h) Form 8307, "Request for Unlicensed Adjuster Activity (5/2005 edition)";

(i) Form 8304, "Examination Retake Form (5/2005 edition)";

(j) Form KYP-01, "Provider Approval Application (5/2005 edition)";

(k) Form CE/PL-100, "Course Approval Application (5/2005 edition)";

(l) Form KYF-01, "Filing Fee Submission Form (5/2005 edition)";

(m) Form CE/PL-200, "Instructor Approval Application" (5/2005 edition)";

(n) Form CE-300, "Continuing Education Course Attendance Roster (5/2005 edition)";

(o) Form CE-301, "Continuing Education Certificate of Completion (5/2005 edition)";

(p) Form CE AFF 304, "Affidavit for Exemption from Continuing Education (5/2005 edition)";

(q) Form 8301-SC, "Specialty Credit Insurance Producer Supplement to License Application (5/2005 edition)";

(r) Form 8301-RV, "Rental Vehicle License - Supplemental Application (5/2005 edition)";

(s) Form CE/RV-302, "Continuing Education Certificate of Completion, Rental Vehicle Managing Employee (5/2005 edition)";

(t) Form CE/RV-303, "Continuing Education Certificate of Completion, Unlicensed Employees and Representatives of Rental Vehicle Agent (5/2005 edition)";

(u) Form 8303, "Record Correction Form (5/2005 edition)"; and

(v) Form 8301-BGC, "Background Check Request Form (5/2005 edition)";

(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., or on the Office of Insurance Web site, http://doi.ppr.ky.gov.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled 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 August 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, 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 prescribes the required forms for license application, appointment, prelicensing, and continuing education course completion; examination retake, provider, and course approval; filing fee submission, instructor approval, continuing education attendance roster, and certificate of completion; specialty credit insurance producer supplement to license application, rental vehicle license supplemental application, continuing education certificate of completion, rental vehicle managing employee, continuing education certificate of completion, unlicensed employees and representatives of rental vehicle agent, record correction, and background check request.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of subtitles 9 and 15, which require the executive director to prescribe forms for insurance licensing and education detailed above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(4) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of viatical settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Office of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory requirements for licensing.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect individual and business entities that are required to hold one or more insurance licenses in Kentucky.

(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 new regulation does not make any substantive change to the regulations. It removes forms that were previously incorporated by reference in individual regulations and places them in this new forms regulation.

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

(a) Initially: There should not be an initial cost to implement this administrative regulation.

(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 will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all members of each license class in Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(New Administrative Regulation)

902 KAR 8:095. Local health department employee performance evaluation program.

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee performance.

Section 1. Effective date of this administrative regulation. (1) The effective date for this administrative regulation shall be July 1, 2006.

(2) The purpose of the extended effective date shall be to provide for a period of time for local health departments to transition to the new employee performance evaluation program described in this administrative regulation.

(3) The cabinet shall provide technical assistance and training for appropriate local health department supervisory employees prior to the effective date of this administrative regulation.

(4) 902 KAR 8.080, Section 9 shall be used for employee performance evaluation through June 30, 2006.

Section 2. Purpose of the Employee Performance Evaluation Program. (1) The purpose of the employee performance evaluation program shall be to establish a uniform process for the evaluation of an employee's performance during a specified period of time.

(2) Specific objectives of the program shall include the following:

(a) Increase the efficiency of the agency and employee through the annual planning of job duties, objectives, and performance characteristics and assisting the employee to improve performance through prior knowledge of the expectations of the supervisor;

(b) Serve as a medium which brings the supervisor and employee together for constructive performance discussion and written documentation;

(c) Serve as a means to determine the level at which an employee is performing;

(d) Recognize performance that meets and exceeds performance standards;

(e) Identify and correct substandard performance;

(f) Assist in determining and recording special talents, skills, and capabilities that might otherwise not be noticed or recognized;

(g) Ensure understanding of duties and standards expected of the employee;

(h) Provide assistance in assigning work and delegating responsibility based on a mutual understanding of the employee's skills and abilities;

(i) Encourage the continued growth and development of employees; and

(j) Serve as a basis to review the employee's performance for granting work related salary adjustments.

Section 3. Designated Employee Performance Evaluations. (1) Employee performance evaluations shall be completed at the following times:

(a) Prior to the completion of the required initial appointment probationary period established in 902 KAR 8.080, Section 9,

(b) At the annual employee performance evaluation in accordance with Section 4 of this administrative regulation;

(c) Prior to completion of the required probationary period following promotion established in 902 KAR 8:090, Section 10;

(d) Following reinstatement of an employee that had a gap of service with an agency of more than one (1) year but does not exceed three (3) years from date of separation in accordance with 902 KAR 8.080, Section 3(3); or

(e) At a special performance evaluation required by Section 10 of this administrative regulation.

Section 4. Annual Employee Performance Evaluation. (1) An employee that has gained regular status shall be evaluated by the appointing authority or designated supervisor on an annual basis.

(2) An employee's established anniversary date shall be the first day of the first pay period after initial employment, and upon completion of twenty-six (26) pay periods of service during which the employee earned annual and sick leave pursuant to 902 KAR 8:120. A designated part-time employee's established anniversary date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(3) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(4) An annual increment date shall not change when an employee:

(a) Is in a position that is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result the employee's position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave;
(g) Is reclassified; or
(h) Is promoted.

(5) A regular status employee shall maintain his current annual increment date upon the effective date of this administrative regulation. The performance evaluation date for an employee appointed on or after July 1, 2006 shall be twenty six (26) pay periods following initial appointment.

Section 5. Employee Performance Evaluation Process (1) The supervisor shall maintain a record throughout the evaluation period for each employee supervised.

(2) The record shall provide a chronological record of consistently-maintained accomplishments or problems by an employee.

(3) The purpose of the record shall be to ensure that the evaluations are based on actual activities and performance during the review-rating period and provide documentation necessary for the performance salary adjustment or indicated disciplinary actions necessary in the case of unacceptable performance.

(4) A performance evaluation shall be completed for each regular status employee using the Local Health Department employee performance evaluation form (CH-40A), developed by the department in consultation with the agencies and the council.

(5) The CH-40A shall contain documented efforts made by the supervisor during the review period to correct unacceptable performance of the employee.

(6) At the beginning of the review period, unless the appointing authority has directed otherwise, the supervisor shall identify for each employee supervised:
(a) The performance competencies;
(b) Expectations;
(c) Goals; and
(d) Objectives.

(7) A supervisor shall develop an annual, written performance plan for each employee supervised.

(8) The supervisor and employee shall meet to discuss the identified performance competencies, expectations, goals, and objectives and decide on an individual development plan to assist the employee in performing the job. The annual performance plan shall include:
(a) An annual performance plan period;
(b) Job-related performance competencies, goals, and objectives that are consistent with the employee's position description and relate to the agency's goals and performance competencies. Each performance competency shall describe:
(1) Standards or indicators of success; and
(2) Measurable results and time frames if applicable; and
(c) Provisions for a minimum of one (1) interim performance plan review during the plan year to discuss performance progress, any deficiencies and plan updates as necessary.

(9) The supervisor, at the end of the review period, shall rate the performance of an employee on the identified performance competencies, indicating both the level of work performed and examples of the employee's work supporting the rating given on each measure and the final rating the employee will receive.

(10) The supervisor shall identify the performance competencies, goals, expectations, and objectives for the next plan year.

(11) The results of the employee performance evaluation may be submitted to the reviewer, if other than the appointing authority, and the appointing authority prior to meeting with the employee.

(12) The supervisor and the employee shall meet to discuss the supervisory ratings, performance competencies, goals, and expectations, objectives identified for the next review period and the employee's development plan for the next review period. The employee shall have the opportunity to provide input, examples of work and a self-evaluation for the supervisor's consideration.

(13) The employee shall have an opportunity to attach written comments concerning the rating of the supervisor's evaluation. The comments shall be provided to the supervisor no later than five (5) working days after the supervisor and employee meet to discuss the performance evaluation.

(14) An employee that disagrees with the performance rating conducted by the employee's supervisor may ask for a review with the reviewer. If the employee is not satisfied with the response of the reviewer, the employee may submit a grievance through the agency's grievance procedure.

Section 6. Employee Performance Evaluation Competencies. (1) An employee shall be evaluated on at least the following performance competencies:
(a) Position knowledge,
(b) Communication;
(c) Concern for accuracy;
(d) Service orientation;
(e) Organizational awareness; and
(f) Performance orientation.

(2) A supervisor shall be evaluated on the following competencies in addition to those stated above:
(a) Staff development,
(b) Functional planning; and
(c) Decision making

(3) In addition to the required competencies established in subsections (2) and (3) of this section, additional competencies may be added to the employee's or supervisor's evaluation that reflects the level of development of the employee, level of responsibility, degree of independence, complexity and the overall scope of the employee's job duties.

Section 7. Employee Evaluation Rating Factors. (1) The following ratings shall be used by the supervisor to evaluate an employee's job performance for the competencies identified:
(a) Proficient and commendable performance;
(b) Effective and competent performance;
(c) Needs development performance; or
(d) Unacceptable performance.

Section 8 Overall Performance Rating of the Employee. (1) The supervisor shall provide an overall rating of the employee's performance based on the supervisor's judgment regarding the following levels of performance:

(a) Proficient and commendable performance rating level for the employee who:

1. Consistently demonstrates skill in the execution of the majority of critical job responsibilities and objectives;
2. Makes important contributions to the overall functioning of a department by demonstrating solid performance with respect to productivity and quality;
3. Possesses strong skills and knowledge; and
4. Is a strong team player that maintains and promotes good working relationships.

(b) Effective and competent performance rating level for the employee who:

1. Competently executes the majority of critical job responsibilities and objectives;
2. Makes positive contributions to the overall functioning of an agency by demonstrating sufficient performance with respect to productivity and quality of work;
3. Possesses appropriate level of skills and knowledge;
4. Maintains and promotes positive working relationships as a team player;
5. Works positively to influence the work group; and
6. Adjusts readily to changing situations and work assignments.

(c) Needs development performance rating level for the employee who:

1. The overall performance to ensure consistent execution of all job responsibilities and objectives needs development;
2. Demonstrates success in some areas but guidance in other areas has been needed; and
3. Demonstrates performance competencies that need further development and consistent application.

(d) Unacceptable performance rating level for the employee whose overall performance indicates that:

1. Job duties and responsibilities and objectives have not been consistently met;
2. His performance requires close monitoring and has not kept pace with job related requirements; and
3. Successes have been only occasional or of minimal impact

and performance has failed to demonstrate sufficient level of competencies required

Section 9. Salary adjustment for an employee based on the levels of performance.

(1) If, in the judgment of the supervisor and appointing authority, an employee that receives a rating at the proficient and commendable level, shall be entitled to receive:

(a) The annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary;

(b) An additional amount not to exceed three (3) percent of the employee's salary provided adequate documented justification is provided to the department for approval.

(2) If in the judgment of the supervisor and appointing authority, an employee receives a performance rating at the effective and competent level, the employee shall receive the annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(3) If in the judgment of the supervisor and appointing authority, an employee receives a rating at the needs development level after appropriate supporting documentation has been made, the employee shall receive a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary. An appointing authority shall.

(a) Require a special evaluation to be conducted no later than 120 days following the annual evaluation to determine if the employee's level of performance has improved,

(b) If the employee's performance has improved to the effective and competent level, approve the employee's receipt of the additional fifty (50) percent over the remainder of the evaluation period,

(c) For the employee who shows no improvement in performance or whose performance deteriorates:

(1) Remove the fifty (50) percent salary increment; and

(2) Initiate appropriate disciplinary action.

(4) If in the judgment of the supervisor and appointing authority, an employee receives a rating at the unacceptable level, the appointing authority shall not grant a salary increase except as provided in subsection (c) of this section. The appointing authority shall:

(a) Initiate dismissal action if indicated by supporting documentation;

(b) If the supporting documentation does not indicate a dismissal action, initiate appropriate disciplinary action followed by a performance evaluation to be completed no later than 120 days after the disciplinary action was initiated; or

(c) Provide the employee a salary adjustment at the needs development level, if an employee improves the level of performance and satisfactorily meets the performance improvement objectives as determined by the re-evaluation.

(5) The employee performance salary adjustment shall be given to the eligible employee at the beginning of the first pay period following twenty-six (26) pay periods of service during which the employee was in pay status.

Section 10. Special Performance Evaluation. (1) A special review may be conducted at any time by the employee's supervisor to gauge the level of performance or to improve performance.

(2) The special performance evaluation would be particularly applicable if an employee's work performance deteriorates during the review cycle.

Section 11. Employee Rights and Responsibilities. (1) An employee shall have the opportunity to include written comments pertaining to an evaluation and may attach additional pages, as necessary.

(2) If the employee provides comments, the comments shall be attached to the evaluation form and made part of the employee personnel file. The employee shall sign the performance evaluation. However, the employee's signature shall not be required for the evaluation to be complete, the signature shall only indicate the evaluation has been discussed with the employee and shall not imply agreement or disagreement with the evaluation.

(3) An employee shall be provided with the basis of the evaluation and, upon written request, shall be provided a copy of documents which were considered in completing the evaluation.

(4) Upon written request to the next higher-level administrator, an employee with regular status, shall be granted an opportunity to discuss any concerns regarding the evaluation.

Section 12 Incorporation by Reference. (1) "Form CH-40 A, Local Health Department Employee Performance Evaluation Form", (7/1/2006 Edition), Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 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
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert L. Nelson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation that establishes a performance evaluation program for local health department employees. The current evaluation is being maintained until the new evaluation program is transitioned in July 1, 2006. The intent of the new employee evaluation program is to provide for differentiation in compensation based on 4 levels of employee performance. The length of time until July 1, 2006 is to provide an opportunity for local health departments to apply the new evaluation program on a trial basis to work out associated problems.

(b) The necessity of this administrative regulation: KRS 211.1755 describes the responsibility of the cabinet in promulgating administrative regulations for administering a personnel program for local health departments. One of the areas for personnel administration is employee performance evaluations. This administrative regulation defines a uniform employee evaluation program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by implementing a uniform employee evaluation program for the local health department employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 211.1755

identifies employee performance evaluation as part of the personnel program for local health departments. This administrative regulation describes a revised employee performance evaluation program that will be used by all local health departments.

(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 current administrative regulation provides for an employee evaluation program that has been in existence for several years. The amendments implement a new employee evaluation program based on the demonstration of competencies by the employee. The compensation of employees will be based on 4 levels of performance and likewise 4 different levels of compensation. The new employee performance evaluation will be phased in with full implementation July 1, 2006.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary in order to provide a more objective process for employee performance evaluation as was requested by the directors of the respective local health departments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the authorized statute by providing a consistent employee performance evaluation program in accordance with KRS 211.1755(3)(a)7.

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide for a consistent employee performance evaluation program applicable to all local health departments utilizing the forms and process.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The local health department will be affected by this administrative regulation. This would not include the Louisville Metro, Lexington-Fayette County, or the Northern Kentucky Independent District Health Department.

(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 administrative regulation will establish a new employee performance evaluation program for local health department employees. The administrative regulation will go into effect July 1, 2006. During the interim period, staff of the Department for Public Health will conduct training programs for supervisors on the new employee evaluation program. Beginning July 1, 2006, the employee ratings will determine the amount of compensation an employee receives based on performance factors and standards.

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

(a) Initially: There will be no costs associated with this administrative regulation.

On a continuing basis: The administrative regulation once effective in July 2006 may incur costs to the local health departments that would increase somewhat the amount provide to employee's that perform at the commendable level.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding would be through the general revenues of the local health departments.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will established as a result of 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. 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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The administration regulation will affect each local health department excluding Louisville Metro, Lexington–Fayette, and the Northern Kentucky Independent District Health Department.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation defines the provisions of a revised employee performance evaluation program to be implemented by July 2006 for local health department employees.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation would not have an affect on the expenditures or revenues of the local health department. Once implemented by July 2006, the performance evaluation program will provide for the compensation based on the level of performance of an employee Each Board of Health would approve an annual performance rate based on the budget. Employee's performing at a level above the established rate may receive an additional increase which can also be factored into the budget.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division for Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 95:010. Definitions for 902 KAR Chapter 95.

RELATES TO: KRS 211.855-858

STATUTORY AUTHORITY: KRS 211.855-858

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health within the Cabinet for Health and Family Services. KRS 211.855 authorizes the Cabinet for Health and Family Services to provide by administrative regulation for the registration and certification of radon mitigators, tester, and laboratories. This administrative regulation establishes definitions for 902 KAR Chapter 95.

Section 1. Definitions. (1) "Applicant" means a person or firm who applies for certification in radon measurement or mitigation or as a radon laboratory.

(2) "Building" means any structure used or intended for supporting or sheltering any use or occupancy.

(3) "Business day" means any day of the year excluding Saturdays, Sundays, and Commonwealth of Kentucky holidays.

(4) "Business hours" means from 8 a.m. to 4:30 p.m. ET, Monday through Friday, with the exception of Commonwealth of Kentucky holidays.

(5) "Cabinet" means Cabinet for Health and Family Services or its duly authorized representatives.

(6) "Certified" means meeting the requirements of 902 KAR 95:020, and certain subsections thereof, in order to:

(a) Perform measurements of radon and radon decay products;

(b) Install radon mitigation systems;

(c) Conduct laboratory analysis to detect radon or radon decay products.

(7) "Certified in radon or radon decay product measurement" means a person who:

(a) Meets the requirements of 902 KAR 95:020;

(b) For compensation provides professional or expert advice

on radon or radon decay products measurements, radon entry routes, or other matters pertaining to radon.

(8) "Certified in radon mitigation" means a person who:

(a) Meets the requirements of 902 KAR 95.020, and

(b) For compensation, installs systems designed to reduce radon or radon decay products from buildings

(9) "Certified radon laboratory" means a person or firm which:

(a) Meets the requirements of 902 KAR 95 020, and

(b) Analyzes samples or tests for radon or radon decay products.

(10) "Compensation" means something given or received in exchange for radon measurement, mitigation, or analysis.

(11) "Diagnostic test(s)" means procedures used to identify or characterize conditions within buildings that may contribute to radon or radon decay products entry or elevated radon or radon decay products levels or may provide information regarding the performance of a mitigation.

(a) Identify conditions which may allow radon or radon decay products entry, such as foundation cracks or openings around pipes; or

(b) Provide information concerning the performance of a radon mitigation system

(12) "EPA" means the United States Environmental Protection Agency.

(13) "Lowest livable level" means the lowest level which could be used for living space without renovations The radon test shall be conducted in a room that is used regularly The radon test shall not be conducted in a kitchen, bathroom, laundry room, or hallway. In real estate transactions, a buyer and seller should explicitly discuss and agree on the radon test location to avoid any misunderstanding.

(14) "Mitigation" shall mean the installation of any system to reduce radon levels in a building or to prevent entry of radon or radon decay products into a building through air or water.

(15) "Mitigator" shall mean any person or firm, which installs a mitigation system in a building.

(16) "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision agency of this state or other state or political subdivision or agency thereof, or any legal successor, representative, agent, or agency of the above.

(17) "Picocurie" or "pCi" means a unit of radioactivity equal to one trillionth of a Curie; a Curie equals thirty-seven (37) billion decays per second.

(18) "Picocuries per liter" or "pCi/l " means a unit of radioactivity corresponding to:

(a) One (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or;

(b) .037 decays per second or two and two-tenths (2.2) decays per minute in each liter of air containing one (1) pCi/l.

(19) "Quality assurance" in radon measurement means a program designed to provide valid, scientifically defensible results with known precision, bias, and accuracy. This program shall include:

(a) Planning;

(b) Documentation; and

(c) Quality control activities;

(20) "Quality control" in radon measurements means a system of activities and measurements made to ensure and monitor data quality. These activities include but are not limited to:

(a) Calibration of equipment;

(b) Use of duplicate, blank, and spiked measurements or test kits;

(c) Interlaboratory comparisons;

(d) Audits.

(21) "Radon" (Rn-222) means a naturally occurring radioactive element which exists as an inert gas that is colorless, odorless, and tasteless.

(22) "Radon decay products" means the four (4) short-lived radioactive elements (Po – 218, Pb – 214, Bi – 214, Po – 214) which exist as solids and immediately follow Rn – 222 in the decay chain.

(23) "Radon measurement" means the act of testing the air, water, and/or soil for the presence and/or concentration of radon and its decay products.

(24) "Radon measurement devices" mean those electronic, mechanical, or chemical units which are used to determine the presence and/or concentration of radon in air, water, and/or soil

(25) "Radon measurement device (active)" means an EPA-approved radon or radon decay product measurement device system which uses a sampling device, detector, and analysis system integrated as a complete unit or as separate portable components. Active devices include continuous radon monitors, continuous working level monitors, and grab radon and grab working level measurement systems.

(26) "Radon measurement device (passive)" means an EPA-approved radon measurement system in which the sampling device, detector, and measurement system do not function as a complete and integrated unit. Passive devices include electret ion chamber devices, alpha tract devices, and activated carbon or other absorbent systems.

(27) "Radon Proficiency Program (RPP)" means a program administered by a nationally-recognized organization dealing with listed measurement providers, mitigators, and laboratories to insure uniformity of practice.

(28) "Radon progeny" means radon decay products.

(29) "Radon and radon progeny laboratory" means a person or firm performing analysis to measure radon and/or progeny on a passive or active device or devices.

(30) "Standard operating procedure" means a written document, which describes in detail commonly accepted methods for the performance of certain tasks.

(31) "Working level (WL)" means any combination of radon progeny in one (1) liter of air, which will produce emission of one and three-tenths (1.3) X ten and five-tenths (10.5) MeV of potential energy. With standard assumptions, WL can be converted to pCi/L using a conversion factor of 200. (As per Radon Fact Book, EPA, 1993).

(32) "Working level month (WLM)" means an exposure to radon progeny equal to that from one (1) working level (WL) for 170 hours.

JAMES R. HOLSINGER, JR, M.D., Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner

APPROVED BY AGENCY: July 12, 2005

FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this regulation will be held August 22, 2005, at 9 a.m., in the Cabinet for Health Services Auditorium, First floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to the contact person.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street 5 WB, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward Lohr

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes radon definitions for 902 KAR Chapter 95.

(b) The necessity of this administrative regulation: KRS 211.855 requires the Cabinet for Health and Family Services to develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigations, and

measurements.

(c) How this administrative regulation conforms to the content of the authorizing statutes The regulation follows KRS 211.855

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the definitions for 902 KAR 95.020.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Radon measurement businesses - 10
Home inspection businesses - 300
Radon mitigation businesses - 20
County health departments - 120
State agencies (CHFS) - 1
Radon laboratories - 6
Professional organizations - 5
American Association of Radon Scientists and Technologists
Kentucky Real Estate Inspection Association
Kentucky Home Builders Association
National Environmental Health Association
National Radon Safety 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: Individuals and businesses that provide radon mitigation, radon measurement services, and radon laboratories services to the public will have to be certified by the state. State certification requires formal professional training in radon and demonstrated proficiency. All radon laboratories effected by this regulation are located outside of Kentucky.

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

(a) Initially: $120,000

(b) On a continuing basis: Minimal Training Program $10,000; 2 technical support positions $70,000; 1 administrative support position $20,000 = $100,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 211.856 mandates the cabinet to fix a schedule of fees to support this 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: Fees will be collected as mandated by KRS 211.856.

(8) State whether or not this administrative regulation establishes any fees or directly or directly increases any fees: Fees will be collected as mandated by KRS 211.856.

(9) TIERING: Is tiering applied? Tiering was not used, because the administrative regulation applies to all groups equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of local government. This administrative regulation affects only local county health departments.

3. State the aspect or service of local government to which this administrative regulation relates: This regulation provides definitions for radon related terms used in 902 KAR 95:020.

4. How does this administrative regulation affect the local government or any service it provides? It provides clarification to local health departments so that they may issue permits for installation of radon mitigation systems, inspect radon mitigation systems for installation compliance and collect fees for this activity

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division for Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 95:020. Radon regulation.

RELATES TO: KRS 211.855-858
STATUTORY AUTHORITY: KRS 211 855-858
NECESSITY AND FUNCTION: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health within the Cabinet for Health and Family Services. KRS 211.855 requires the Cabinet for Health and Family Services to develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigations, and measurements. KRS 211.856 requires the Cabinet for Health and Family Services to promulgate administrative regulations for application for certification, requirements for certification, fees, and other matters that may be necessary to protect the public from unnecessary radiation exposure from radon. KRS 211.857 and 211.858 provide for injunctive relief against violators and penalties for violations of KRS 211.855-858. This administrative regulation establishes requirements, procedures, and fees for radon-related permits, certification, and accreditation, establishes terms and conditions for equivalent certification, and establishes procedures for the enforcement of the certification programs.

Section 1. Radon Mitigation Business and Specialist Certification. (1) Certification requirements for a radon mitigation business:

(a) Radon mitigation business certification shall be required of any person or firm, which designs or installs radon mitigation systems within the Commonwealth of Kentucky.

(b) The certified radon mitigation business shall:

1. Not conduct mitigation activities without the services of a certified mitigation specialist. The certified mitigation specialist shall be responsible for evaluating diagnostic tests in buildings and designing mitigation systems for those buildings;

2. Ensure that radon mitigation system installations are performed under the direct supervision of a certified radon mitigation specialist;

3. Ensure that the certified radon mitigation specialist performs a visual inspection and diagnostic tests, as appropriate, prior to system installation to determine the appropriate mitigation system to be installed. Observations and test results made during inspections shall be documented by the specialist and on file for review by the cabinet and its authorized agents;

4. Shall ensure that the radon mitigation specialist reviews any available results from previous radon tests to assist in developing an appropriate mitigation strategy prior to any mitigation work. A certified radon measurement specialist shall perform the post mitigation test;

5. Prior to commencing any work, shall provide the client, in writing, a description of possible types of energy costs incurred in operating the system. Immediately upon completion of the installation of the mitigation system, written instructions on the operation and maintenance of the system shall be provided to the client;

6. Obtain all necessary permits for installation of mitigation systems from the appropriate agency prior to initiating any activity requiring the permit;

7. Provide information on the warranty and the proper functioning of mitigation equipment in writing to clients prior to installation of the system; and

8. Prominently display its state radon certification number on each radon mitigation system.

(2) Application for Radon Mitigation Business Certification.

(a) An application for certification or renewal of certification as a radon mitigation business shall:

1. Be filed on cabinet form RAD-2, Application For Radon

Business Certification, cabinet;

2. Contain complete and accurate information; and

3. Include the following information:

a. The name, business location, address, and telephone number of applicant,

b. The names of the owners and officers who have signature authority;

c. A copy of the contract to be provided to clients;

d. A copy of the warranty to be provided to clients;

e. A copy of the state certification for the certified radon mitigation specialist employed by the business as staff or as a consultant; and

f. A copy of the state certification for the certified radon measurement business to be utilized to perform radon and/or radon decay products decay products testing.

(3) Certification and Application Requirements for a radon mitigation specialist.

(a) Radon mitigation specialist certification shall be required of any person who designs or installs radon mitigation systems within the Commonwealth of Kentucky.

(b) A person shall be eligible to be certified as a radon mitigation specialist if the individual:

1. Is at least eighteen (18) years of age; and

2. Provides the cabinet with documentation of successful completion of a.

a. Cabinet-approved course on radon diagnosis and mitigation; or

b. Cabinet-recognized equivalent certification. The cabinet currently recognizes equivalent certification from the National Radon Safety Board (NRSB) or the National Environmental Health Association (NEHA).

(c) An application for certification or renewal of certification as a radon mitigation specialist shall

1. Be filed on form RAD-3, Application For Radon Specialist Certification;

2. Contain complete and accurate information including the:

a. Name;

b. Address;

c. Birth date; and

d. Telephone number of applicant; and

3. Be accompanied by the appropriate fee as established in Section 4 of this administrative regulation.

(4) If the application for certification or renewal of a radon mitigation business or radon mitigation specialist is denied, that person or business shall not perform radon mitigation in the Commonwealth of Kentucky.

(5) Certification requirements shall not apply to:

(a) A person doing mitigation on a personal single residence which they own and occupy;

(b) An agent of the federal or state government acting within an official radon program; or

(c) A person performing mitigation as part of a scientific research project approved by the cabinet.

(6) Quality control requirements.

(a) A radon mitigation business shall:

1. Use cabinet-approved devices and methods for the measurement of radon and radon decay products. Methods shall be consistent with EPA document 402-R-93-003, Protocols for Radon and Radon Decay Products Measurements In Homes, or in any document that supersedes 402-R-93-003 and current EPA guidelines;

2. Use cabinet-approved methods for radon mitigation. Methods shall be consistent with EPA document 402-R-93-078, Radon Mitigation Standards, or in any document that supersedes 402-R-93-078 and current EPA guidelines; and

3. Report premitigation and post-mitigation measurements only to:

a. The cabinet and its authorized agents; and

b. The owner or occupant that paid for the service.

(7) Certification maintenance.

(a) A certified radon mitigation business or specialist shall meet the following requirements for continued certification:

1. Conduct all activities in compliance with this administrative regulation; and

2. Report in writing changes to the information provided on the application or renewal within ten (10) business days.

(b) Certification renewal

1. Certifications shall expire on the last day of the month, one (1) year after the month of issue.

2. At least thirty (30) days prior to expiration of the certification, a request to renew on cabinet form RAD-2, Application For Radon Business Certification or cabinet form RAD-3, Application for Radon Specialist Certification shall be filed with the cabinet with the renewal fee as established in Section 4 of this administrative regulation.

3 The application for renewal for a radon mitigation specialist shall contain proof of the applicant having attended eight (8) hours worth of continuing education approved by the cabinet within the last twelve (12) months These hours may be applied to the continuing education credit required by radon measurement certification

Section 2. Radon Measurement Business and Specialist Certification. (1) Certification requirements for a radon measurement business: shall be as follows:

(a) A radon measurement business certification shall be required of any person or firm which conducts radon or radon decay products measurements within the Commonwealth of Kentucky.

(b) The certified radon measurement business shall:

1. Not conduct radon measurement activities without the services of a certified measurement specialist. The certified measurement specialist shall direct the measurement activities of the measurement business

2. Ensure that radon measurement specialists follow EPA guidelines for quality assurance and quality control, evaluate operating procedures, and ensure compliance with state and federal regulations.

3. Ensure that radon and radon decay products testing is only performed by certified measurement specialists. Observations and test results shall be documented by the specialist and on file for review by the cabinet or its authorized agents for five (5) years.

4. Secure the services of a radon laboratory certified by the state of Kentucky to analyze samples for the presence and level of radon and/or radon decay products when the analysis requires the use of stationary equipment in a separate facility.

5. Obtain certification as a laboratory prior to analyzing samples such as carbon canisters, alpha track detectors, or radon decay products integrated sampling units. Use of portable radon or radon decay products measurement equipment such as a continuous radon monitor or a continuous working level monitor does not require laboratory certification.

6. Develop and adhere to a plan of quality assurance and quality control for each type of measurement equipment employed in order to assure the reliability and validity of radon measurements.

7. Prominently display its state radon certification number on each radon measurement report.

8. Distribute for sale only those devices that are approved by the cabinet.

9. Ensure that information given to the client or the public on the health effects of radon and on radon mitigation are current and originate from the EPA or the cabinet.

(2) Application for radon measurement business certification.

(a) An application for certification or renewal of certification as a radon measurement business shall:

1. Be filed on cabinet form RAD-2, Application For Radon Business Certification;

2. Contain complete and accurate information; and

3. Include the following information:

a. The name, business location, address, and telephone number of applicant;

b. The names of the owners and officers who have signature authority;

c. An identification of the type of radon or radon decay products measurement equipment for which certification is sought, as defined in the authorized measurement protocols;

d. A copy of the contract to be provided to clients;

e. A copy of the warranty to be provided to the clients;

f. A copy of the state certification for the certified radon measurement specialist employed by the business as staff or as a consultant; and

g A copy of the state certification for the certified radon laboratory to be utilized to perform radon and/or decay products sample analysis.

(3) Certification and application requirements for a radon measurement specialist.

(a) Radon measurement specialist certification shall be required of a person who conducts radon or radon decay products measurements within the Commonwealth of Kentucky.

(b) A person shall be eligible to be certified as a radon measurement specialist if the individual:

1. Is at least eighteen (18) years of age and,

2. Provides the cabinet with documentation of successful completion of a:

a. Cabinet-approved course on radon measurement; or

b. Cabinet-recognized equivalent certification. The cabinet currently recognizes equivalent certification from the National Radon Safety Board (NRSB) and/or the National Environmental Health Association (NEHA).

3. An application for certification or renewal of certification as a radon mitigation specialist shall:

a Be filed on form RAD-3, Application For Radon Specialist Certification;

b. Contain complete and accurate information on the applicant, including:

i. The name;

ii. Address;

iii. Birth date, and

iv. Telephone number of applicant, and

c Be accompanied by the appropriate fee as established in Section 4 of this administrative regulation.

4. If the application for certification or renewal of a radon measurement business or radon measurement specialist is denied, that person or business shall not perform radon testing in the Commonwealth of Kentucky.

(c) Certification requirements shall not apply to

1. A person doing radon testing on a personal, single residence which they own and occupy.

2. An agent of the federal or state government acting within an official radon program.

3. A person performing measurements as part of a scientific research project approved by the cabinet.

(d) Quality control requirements. Each radon measurement business shall:

1. Use only EPA-approved devices and methods for the measurement of radon and radon decay products. Methods shall be consistent with EPA document 402-R-93-003, Protocols for Radon and Radon Decay Products Measurements In Homes, or in any document that supersedes 402-R-93-078 and current EPA guidelines;

2. Have passive measurement devices analyzed only by cabinet-certified laboratories;

3. Maintain calibration for each active measurement device and provide documentation of calibration with each application or renewal;

4. Submit Quality Assurance and Quality Control Plans for each method and type of device to the cabinet prior to use;

5. Make information on the health effects of radon available to clients and ensure that all radon information originates from the EPA or the cabinet;

6. Submit a quarterly report of all radon measurement work conducted within the state to the cabinet on an approved form. This report shall include for each measurement:

a. County name and zip code;

b. Building category; and

c. Radon measurement value;

7. Submit the report no later than thirty (30) days after the end of each quarter;

8. For additional quality control purposes and to consult with the public on matters of public health, the cabinet may ask for detailed reports, which may include:

a. Name of owner and occupant of property measured;

b Street address, city, and nine (9) digit zip code of property;

c. Type of device used to obtain the measurement, and if appropriate, the date of last calibration;

d Type of building structure, or

e Location within the building where the measurement was obtained,

9. Report measurement information only to:

a. The cabinet and its authorized agents; and

b. The owner or occupant that paid for the services.

(e) Certification maintenance.

1. A certified radon measurement business or specialist shall meet the following requirements for continued certification:

a. Conduct all activities in compliance with this administrative regulation; and

b Report in writing changes to the information provided on the application or renewal within ten (10) business days.

(f) Certification renewal.

1. Certifications shall expire on the last day of the month, one (1) year after the month of issue.

2. At least thirty (30) days prior to expiration of the certification, a request to renew on cabinet form RAD-2, Application For Radon Business Certification or cabinet form RAD-3, Application for Radon Specialist Certification shall be filed with the cabinet with the renewal fee as established in Section 4 of this administrative regulation.

3. The renewal application for the radon measurement specialist shall also contain proof of the applicant having attended eight (8) hours of continuing education approved by the cabinet within the last twelve (12) months. These hours may be applied to the continuing education credit required by radon mitigation certification.

Section 3. Radon and Radon Decay Products Laboratory Certification. (1) No person or firm shall perform, represent, or advertise that they perform laboratory analysis of radon testing devices or samples collected from within the Commonwealth of Kentucky unless that person or firm has obtained radon laboratory analysis certification from the cabinet.

(2) Certification requirements for radon and radon decay products laboratory. The certified radon and radon decay products laboratory shall:

(a) Employ as a staff member a state certified radon measurement specialist who shall direct the analytical activities of the radon laboratory. No radon or radon decay products analytical activities shall be conducted without a certified measurement specialist on the staff.

(b) Ensure that radon measurement specialists follow EPA guidelines for quality assurance and quality control measures of the radon analytical activities, evaluate operating procedures, and ensure compliance with state and federal regulations.

(c) Develop and adhere to a plan of quality assurance and quality control for each type of measurement equipment employed in order to assure the reliability and validity of radon measurements.

(d) Provide the cabinet with documentation of successful completion of a cabinet-approved course for radon laboratory analysis or a cabinet-recognized equivalent certification. The cabinet currently recognizes equivalent certification from the National Radon Safety Board (NRSB) and The National Environmental Health Association (NEHA).

(e) Comply with the applicable requirements of this administrative regulation.

(3) Application for radon and radon decay products laboratory certification.

(a) An application for certification or renewal of certification as a radon laboratory shall:

1. Be filed on form RAD-2, Application For Radon Business Certification;

2. Contain complete and accurate information; and

3. Be accompanied by the appropriate fee as established in Section 4 and include the following information:

a. The name, business location, address, and telephone number of applicant;

b. The names of the owners and officers who have signature

authority;

c An identification of the manufacturer and model number of all instrumentation to be used in radon analysis and the frequency and method of calibration; and

d. A description of the quality assurance and quality control procedures for each type of analysis to be performed.

(b) If the application for certification or renewal is denied, the person or firm shall not perform radon or radon decay products analysis services for businesses or individuals in the Commonwealth of Kentucky.

(4) If the application for certification or renewal is denied, the firm shall not perform radon or radon decay products laboratory analysis of samples collected in the Commonwealth of Kentucky.

(5) Exemptions. Certification requirements shall not apply to any laboratory performing measurements and analysis for purposes of scientific research approved by the cabinet.

(6) Reporting requirements.

(a) A certified laboratory shall submit a quarterly report of all devices analyzed from the Commonwealth of Kentucky to the cabinet. This report shall include for each measurement:

1. County name and zip code;

2. Device identification number;

3. Beginning and ending dates of the test; and

4. Concentration of radon in picocuries per liter (pCi/L) or of decay products in Work Levels (WL);

(b) For purposes of quality control and to consult with the public on matters of public health, the cabinet may ask for detailed reports, which may include:

1. Name of owner or occupant of property measured;

2. Street address, city, and nine (9) digit zip code of property;

3. Type of device used to obtain measurement;

4. Type of building;

5. Location within building where measurement was taken; or

6. Purpose of measurement.

(7) Certification maintenance. A certified laboratory shall:

(a) Conduct all activities in compliance with this administrative regulation; and

(b) Report in writing changes to the information provided on the application or renewal within ten (10) business days.

(8) Certification renewal.

(a) Certificates shall expire on the last day of the month, one (1) year after the month of issue.

(b) At least thirty (30) days prior to expiration of the certification, a request to renew on form RAD-2, Application For Radon Business Certification, shall be filed with the renewal fee as established in Section 4 of this administrative regulation.

Section 4. Fee Schedule. (1) Schedule of annual fees.

(a) The following fee schedule shall apply to all persons engaged in activities identified in this administrative regulation. These fees shall accompany all applications for certification and renewal. State and local governmental agencies shall be exempt from the payment of fees pursuant to KRS 211.856.

(b) Radon mitigation certification.

1. In conjunction with a cabinet-recognized certification: $100.

2. With Commonwealth of Kentucky Certification only: $150.

3. Duplicate certificate: twenty ($20) dollars.

(c) Radon and radon decay products measurement certification.

1. In conjunction with a cabinet-recognized certification: $100.

2. With Commonwealth of Kentucky certification only: $150.

3. Duplicate certificate: twenty ($20) dollars.

(d) Measurement laboratory certification.

1. In conjunction with a cabinet-recognized certification: $100.

2. With Commonwealth of Kentucky certification only: $150.

3. Duplicate certificate: twenty ($20) dollars.

(e) Individuals and businesses with multiple state radon certifications: Add the cost of each certification together and divide the total by two (2).

(f) A late fee of fifty (50) percent of the renewal fee will be assessed for each renewal request that is received past its expiration date.

(2) General Requirements.

(a) Certifications shall expire on the last day of the month, one (1) year after the month of issue.

(b) At least thirty (30) days prior to the expiration of the certification a request to renew on a form prescribed by the cabinet shall be filed with the renewal fee established in this section.

(c) This form shall be accompanied by the proper renewal fee.

(d) Payment for fees and other charges shall be submitted in the form of a check or money order to the Environmental Management Branch, 275 E. Main Street, Mail Stop HS 1C-D, Frankfort, Kentucky 40621.

(e) Fees are nonrefundable.

(3) General fees.

(a) The following fee schedule shall apply to activities identified in this administrative regulation

1. Permit to install a radon mitigation system in one (1) and two (2) family dwelling: fifty ($50) dollars.

2. Permit to install a radon mitigation system in all buildings other than one (1) and two (2) family dwellings: $100.

(b) Local health departments or health districts shall issue the permits to mitigate and collect the required fees. Permit fees shall be forwarded to the cabinet.

(c) Local health departments or health districts shall establish an inspection fee not to exceed $100 for the environmental inspection of the completed radon mitigation system. If a reinspection is required, an additional inspection fee not to exceed fifty ($50) dollars may be collected.

Section 5. Training Requirements for Mitigation System Inspectors. Radon mitigation system inspectors must attend a cabinet-approved course on inspections of a radon mitigation system and pass a cabinet exam before inspecting a radon mitigation system as an agent of the state or federal government within an official radon program.

Section 6. Site Approval Procedures. To install a radon mitigation system or to repair or alter an existing system a person shall submit to the cabinet or its authorized agents:

(a) The required permit and inspection fee; and

(b) Cabinet form RAD-1, Application For Radon Mitigation Permit, including the following information:

1. Name and address of the mitigation site including the nine (9) digit zip code;

2. Location of adjacent buildings; and

3. Proposed location of the mitigation system including a detailed drawing with technical information such as:

a. Size of fan;

b. Distance above the roofline or windows;

c. Location and size of the suction and discharge pipe; and

d. Other information as deemed necessary by the cabinet or its authorized agents.

(2) A permit shall only be issued to a certified mitigation business and shall expire ninety (90) days from date of issuance unless an extension is granted by the cabinet.

(3) The permit and inspection number shall be displayed legibly at or near the radon mitigation system label.

Section 7. Inspections and Complaints. (1) Post installation inspection.

(a) Within five (5) business days after notification that the mitigation system has been installed, the cabinet or its authorized agents will schedule an inspection of the system utilizing standards in EPA 402-R-93-078, Radon Mitigation Standards or any document that supercedes 402-R-93-078 and current EPA guidelines, for proper installation.

(b) Authorized agents shall submit a quarterly report of all mitigation work in their areas to the cabinet.

(2) Complaints.

(a) The cabinet and its authorized agents shall investigate complaints received on activities involving radon testing, mitigation of structures, and laboratory analysis of radon and radon decay products.

(b) The cabinet and its authorized agents, during normal business hours, may investigate activities related to the radon business to determine compliance with this administrative regulation.

(c) Investigations of complaints may include the right to:

1. Test any equipment at the facility;
2. Sketch or photograph any portion of the site, building, or equipment;
3. Copy or photograph any document or records; and
4. Interview employees or representatives of the owner, operator or applicant necessary to determine compliance, or noncompliance.

(d) The right to inspect shall be absolute and shall not be conditioned upon any action by the cabinet or its authorized agents except the presentation of appropriate credentials and compliance with appropriate standard safety procedures established by governing agencies.

Section 8. Enforcement (1) Denial, suspension, or revocation of certification. The cabinet may deny, suspend, or revoke certification as a result of:

(a) Misrepresentation on the application, renewal or other information supplied to the cabinet;

(b) Violation of, or failure to comply with this administrative regulation; or

(c) Any condition revealed by application, report, inspection, record, or other evidence, which may warrant this action.

(2) Enforcement Procedures.

(a) The individual or business shall be notified in writing of the denial, suspension, or revocation of certification by certified mail.

(b) Administrative action taken for denial, suspension, or revocation of certification shall have the right to request an administrative hearing within ten (10) business days. Administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 9. Penalty for Violations. Pursuant to KRS 211.858, a person who violates KRS 211.855-858 or any administrative regulation promulgated pursuant to KRS 211.855-858 or who fails to comply with an order of the cabinet issued pursuant to KRS 211.855-858 shall be fined not less than ten (10) dollars nor more than $100 for each day the violation or noncompliance continues.

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

(a) "EPA 402-R-93-003, Protocols for Radon and Radon Decay Products Measurement In Homes", June 1993 edition;

(b) "EPA 402-R-93-078, Radon Mitigation Standards", April 1994 edition;

(c) "Application For Radon Mitigation Permit (RAD-1)", July 2005 edition;

(d) "Application For Radon Business Certification (RAD-2)", July 2005; and

(e) "Application For Radon Specialist Certification (RAD-3)", July 2005 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Environmental Management Branch, 275 East Main Street, Mail Stop HS 1C-D, Frankfort, Kentucky 40621, Monday through Friday, 8 am to 4:30 p.m.

JAMES R. HOLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this regulation will be held August 22, 2005, at 9 a.m., in the Cabinet for Health Services Auditorium, First floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by August 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to the contact person

CONTACT PERSON. Jill Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street 5 WB, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward Lohr

(1) Provide a brief summary of.

(a) What this administrative regulation does: Establishes programs for evaluation and control of activities related to certification of radon mitigators, testers, laboratories, and other matters that may be necessary to protect the public from unnecessary radiation exposure from radon.

(b) The necessity of this administrative regulation: KRS 211.855 requires the Cabinet for Health and Family Services to develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigations, and measurements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.855-858.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the mechanism for certification of radon professionals.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Radon measurement businesses - 10
Home inspection businesses - 300
Radon mitigation businesses - 20
County health departments - 120
State agencies (CHFS) - 1
Radon laboratories - 6
Professional organizations- 5
American Association of Radon Scientists and Technologists
Kentucky Real Estate Inspection Association
Kentucky Home Builders Association
National Environmental Health Association
National Radon Safety 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: Individuals and businesses that provide radon mitigation, radon measurement services, and radon laboratories services to the public will have to be certified by the state. State certification requires formal professional training in radon and demonstrated proficiency. All radon laboratories effected by this regulation are located outside of Kentucky.

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

(a) Initially: $120,000

(b) On a continuing basis: Minimal training program $10,000; 2 technical support positions $70,000; 1 administrative support position $20,000 = $100,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 211.856 mandates the cabinet to fix a schedule of fees to support 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: Fees will be collected as mandated by KRS 211.856.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees will be collected as mandated by KRS 211.856.

(9) TIERING: Is tiering applied? Tiering was not used, because the administrative regulation applies to all groups equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of local government. This regulation affects only local county health departments.

3. State the aspect or service of local government to which this administrative regulation relates: This regulation requires an inspection service by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the local county health department to issue permits for installation of radon mitigation systems, to inspect radon mitigation systems for installation compliance, and collect fees for this activity.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 12, 2005

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 12, 2005, at 10 00 a m., in Room 149 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, and the roll call was taken. The minutes of the June 14, 2005 meeting were approved

Present were:

Members Senator Richard "Dick" Roeding, Co-Chair, Senators Alice Kerr, Joey Pendleton, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.

LRC Staff, Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Sarah Amburgey, Jenifer Harrison, and Emily Harkenrider.

Guests: Todd Leatherman, Maryellen Mynear, Kevin R. Winstead, Office of the Attorney General; Eddie Mattingly, Department of Revenue; Lloyd Vest, Board of Medical Licensure; Larry Disney, James Grawe, C W. Wilson, Real Estate Appraisers Board; Bill Caldwell, Justin Dearinger, David W. Morgan, Division of Water; Dana Fugazzi, Transportation Cabinet; B.J. Helton, Melissa F. Justice, Reecie Stagnolia, Dennis L. Taulbee, Council on Postsecondary Education; Rose L. Baker, Al Mitchell, David Reichert, Environmental and Public Protection Cabinet; Jan Howell, Jason Milligan, Stuart Owen, Chris Stewart, Cabinet for Health and Family Services; Rick O. Baumgardner, Frank Dempsey, Kentucky Watch Publications, Carolyn Quisenberry, Dennis McKiernan, John J. Weikel, II, Educational Training Systems, Inc.

The Administrative Regulation Review Subcommittee met on Tuesday, July 12, 2005, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

Office of the Attorney General: Consumer Protection Division

40 KAR 2.350. Debt adjusters. Maryellen Mynear, Litigation Branch Manager, Todd Leatherman, Director, and Kevin Winstead, Assistant Attorney General, represented the Division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, 4, 5, and 6 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220; (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 2 to delete the requirement that information be submitted regarding past bad practices of the applicant and to delete language regarding application withdrawal prior to approval, to comply with KRS Chapter 380; and (5) to amend the forms incorporated by reference to comply with the changes made to the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Finance and Administration Cabinet: Department of Revenue: Division of Legislative Services: General Administration

103 KAR 1:050. Forms Manual. Eddie Mattingly, Director, represented the Division.

A motion was made and seconded to approve the following amendments: to amend the "Incorporation by Reference" section to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Government Cabinet: Board of Medical Licensure

201 KAR 9:018. Physician advertising. Lloyd Vest, General Counsel, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1, 2, and 4 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board

201 KAR 30:150 Education provider approval. Jim Grawe, General Counsel, C.W. Wilson, Chairman, and Larry Disney, Executive Director, represented the Board. Rick Baumgardner, Licensed General Certified Appraiser in Kentucky and Indiana, appeared in favor of these administrative regulations Dennis McKiernan, Counsel, Educational Training Systems, Inc., and John Weikel, President, Educational Training Systems, Inc., appeared in opposition to these administrative regulations

In response to questions by Co-Chair Roeding, Mr. Weikel stated that he did not submit written comments or request a public hearing on these administrative regulations because he missed the deadlines.

Co-Chair Roeding stated that the Board worked with Subcommittee staff to draft amendments to these administrative regulations which changed their effective dates to January 1, 2008 and made technical corrections.

In response to a question by Representative Reinhardt, Mr. Weikel stated that he wanted the Subcommittee to defer consideration of these administrative regulations for a year. During that time, additional amendments could be drafted and his company could obtain updated training materials from national publishers which complied with the new regulatory requirements.

Representative Bruce stated that the Subcommittee could not defer consideration of administrative regulations without agreement from the promulgative administrative body.

In response to a question by Representative Bruce, Mr. Weikel stated that he had spoken to the Board about his concerns with these administrative regulations.

In response to questions by Senator Pendleton, Mr. Weikel stated that it was premature for Kentucky to amend their regulatory requirements for appraisers, because the new federal standards did not go into effect until 2008, and updated training materials from national publishers would not be available until late 2006 or 2007.

Senator Pendleton stated that it would be better to proceed with these administrative regulations now, so that Kentucky would be prepared to implement the new federal standards in 2008.

Senator Tapp stated that he too preferred proceeding with these administrative regulations to provide the maximum notice of the new requirements. Additionally, he was not aware of any other educational providers that were opposed to these administrative regulations.

In response to a question by Senator Kerr, Mr. Weikel stated that Educational Training Systems, Inc. was headquartered in Louisville and had offices in Lexington and in northern Kentucky.

Representative Lee stated that he favored proceeding with the administrative regulations, because the proposed amendments resolved many of the concerns noted by Mr. Weikel. Furthermore, the Board could work with Educational Training Systems, Inc. in the future to address any remaining technical issues.

In response to a question by Co-Chair Roeding, Mr. Baumgardner stated that he approved of these administrative regulations and their proposed amendments.

Mr. Wilson stated that it was important to proceed with these administrative regulations to provide adequate notice of the new federal standards before they became effective.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 1 to 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.

201 KAR 30:160. Standards for Instructors. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statu-

tory citations; and (2) to amend Sections 1 and 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.

201 KAR 30:170. Evaluation of Instructors. 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 Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 2 to require that ratings be averaged. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:180. Distance education standards. 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 Sections 1, 2, 3, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 3(4) to replace language that was vague and ambiguous; and (4) to amend Section 3(6) to establish requirements for a final examination. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:190. Education requirement for applications received after December 31, 2007. A motion was made and seconded to approve the following amendments. (1) to amend the title to accurately reflect the subject matter of the administrative regulation; (2) to amend Sections 2 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 3 to replace references to the Appraisal Standards Board with references to the Appraisal Qualification Board. Without objection, and with agreement of the agency, the amendments were approved.

Environmental and Public Protection Cabinet: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:010. Water withdrawal permits, criteria, reports. Bill Caldwell, Supervisor, and David Morgan, Director, represented the Division.

In response to questions by Senator Tapp, Mr. Morgan stated that this administrative regulation aided businesses in obtaining financing for projects by permitting them to reserve water availability four and half years earlier than was currently allowed.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to insert statutory citations, (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Section 3(3) to clarify the requirements for increased recording and reporting of the rate or volume of a permitted water withdrawal; and (4) 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.

Council on Postsecondary Education: Adult Education and Literacy

785 KAR 1:130. GED eligibility requirements. B.J. Helton, Senior Associate, Reecie Stagnolia, Vice President, and Dennis Taulbee, General Counsel, represented the Council.

In response to questions by Senator Tapp, Mr. Stagnolia stated that currently, a student could not take the GED tests within a year of dropping out or until the student's last enrolled class had graduated. The amendments to this administrative regulation reduced the waiting time to take the GED tests allowing the student to be eligible to test before October 1. Additionally, participating students did not count towards a district's dropout statistics. The new testing period followed the ninety (90) day window that school districts had to reengage dropout students. Earlier testing allowed the students to improve their employment opportunities or enter postsecondary education without an extended delay.

In response to a question by Representative Reinhardt, Mr. Stagnolia stated that research confirmed that GED program participation declined the longer a student was out of school.

In response to questions by Co-Chair Roeding, Mr. Stagnolia stated that earlier testing prevented students from remaining in an unproductive holding pattern while waiting to take their GED tests.

Subcommittee staff stated that the amendments to this administrative regulation were necessary to conform to the Secondary GED Program established by KRS 158.6455 and 704 KAR 7:150.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations, (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1 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.

Environmental and Public Protection Cabinet: Office of State Fire Marshal: Manufactured Homes and Recreational Vehicles

815 KAR 25:080. Requirements for certifying manufactured home installers. David Reichert, General Counsel, and Al Mitchell, State Fire Marshal, represented the Office.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 5 to delete provisions that repeated or summarized statute, in accordance with KRS 13A.120(2)(e) and (f); and (3) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Cabinet for Health and Family Services: Department for Medicaid Services: Office of the Commissioner: Medicaid Services

907 KAR 1:018 & E. Reimbursement for Drugs. Jason Milligan, Director, Jan Howell, Director, and Stuart Owen, Regulation Coordinator, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:019 & E. Outpatient pharmacy program. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to delete references to the 2004 executive order relating to reorganization; and (2) to amend Sections 3, 4, 5, 7, 8, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Hospitals and Provider Operations: Medicaid Services

907 KAR 1:360 & E. Preventive and remedial public health services. Jason Milligan, Director, and Stuart Owen, Regulation Coordinator, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to delete references to the 2004 executive order relating to reorganization; and (2) to amend Section 2 to correct a statutory citation. 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:

Council on Postsecondary Education: Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

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
405 KAR 24:001. Definitions for 405 KAR Chapter 24.

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License
601 KAR 11:010. Fees relating to commercial driver's licenses.
Dana Fugazzi, Attorney, represented the Department.

In response to a question by Senator Tapp, Subcommittee Staff stated that the amendments to this administrative regulation deleted the criminal records check requirement for additional endorsements because it exceeded the scope of KRS 281A.300. A criminal records check was still required by statute for an initial application and an initial renewal of commercial driver's licenses (CDLs).

In response to questions by Representative Bruce, Ms. Fugazzi stated that this administrative regulation standardized the fees for CDLs. The Department requested that the Subcommittee defer consideration of this administrative regulation, so they could make some additional language changes for clarification purposes.

Office of Insurance: Workers' Compensation Self-Insured Groups
806 KAR 52:020 & E. Aggregate excess insurance.
806 KAR 52:030 & E. Workers' compensation self-insured group rate, rule and form filings.

Department of Public Protection: Horse Racing Authority: Harness Racing
811 KAR 1:215 & E. Kentucky Standardbred Development Fund.

Cabinet for Health and Family Services: Office of Inspector General: Health Services and Facilities
902 KAR 20:330 & E. Psychiatric residential treatment facilities.

The subcommittee adjourned at 11:05 a.m., until Tuesday, August 9, 2005.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

Interim Joint Committee on Agriculture and Natural Resources Meeting of June 8, 2005

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of June 8, 2005, having been referred to the Committee on May 10, 2005, pursuant to KRS 13A.290(6):

301 KAR 2:49
301 KAR 2:111
301 KAR 2:142
301 KAR 2:174
301 KAR 2.251
301 KAR 3 022
805 KAR 9:010
805 KAR 9.020
805 KAR 9:030
805 KAR 9:040
805 KAR 9 050
805 KAR 9 060
805 KAR 9:070
805 KAR 9:080
805 KAR 9.090
805 KAR 9:100

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 8, 2005 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Interim Joint Committee on Agriculture and Natural Resources Meeting of July 13, 2005

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of July 13, 2005, having been referred to the Committee on July 6, 2005, pursuant to KRS 13A.290(6):

301 KAR 2.082
301 KAR 2:144
301 KAR 2:172
301 KAR 2:178
301 KAR 2.179
401 KAR 50:017
401 KAR 50.045
401 KAR 63.005

The following administrative regulations were found to be deficient pursuant to KRS 13A 290(7) and 13A 030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 13, 2005 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Regulation Number	30 Ky.R. Page No.	Effective Date

VOLUME 30

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

ORDINARY ADMINISTRATIVE REGULATIONS:

405 KAR 7:001		
Amended	1045	
405 KAR 8 001		
Amended	1050	
405 KAR 10 001		
Amended	1057	
405 KAR 12 001		
Amended	1060	
405 KAR 16.001		
Amended	1063	
405 KAR 18:001		
Amended	1069	
405 KAR 20 001		
Amended	1075	
405 KAR 24:001		
Amended	1079	

VOLUME 31

The administrative regulations listed under VOLUME 31 are those administrative regulations that were onginally published in Volume 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

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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.)

501 KAR 10 001E	1768	4-11-05
503 KAR 1:110E	1633	3-15-04
803 KAR 2.500E	1637	3-15-04
Replaced	1736	7-1-05
806 KAR 17:290E	273	7-15-04
806 KAR 52:010E	1931	4-22-05
806 KAR 52:020E	1932	4-22-05
806 KAR 52:030E	1934	4-22-05
810 KAR 1.009E	1640	3-15-05
Replaced	1972	7-1-05
811 KAR 1:215E	1936	5-9-05
815 KAR 8:010E	1769	3-31-05
815 KAR 8:020E	1771	3-31-05
815 KAR 8:045E	1773	3-31-05
902 KAR 20:320E	1941	5-9-05
902 KAR 20.330E	1953	5-10-05
907 KAR 1:019E	1497	1-28-05
907 KAR 1:360E	1956	5-10-05

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11 KAR 3:100		
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11 KAR 4:071	650	11-8-04
11 KAR 5:130		
Amended	1692	6-13-05
11 KAR 5:140		
Amended	1693	6-13-05
11 KAR 5:145		
Amended	1694	6-13-05
11 KAR 18.010		
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13 KAR 2.045		
Amended	1843	
16 KAR 2:090		
Amended	1847	(See 32 Ky.R.)
16 KAR 2:100		
Amended	1849	(See 32 Ky.R.)
16 KAR 3:060		
Amended	1850	(See 32 Ky.R.)
16 KAR 4:010		
Amended	1853	(See 32 Ky.R.)
16 KAR 5:010		
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16 KAR 6 010		
Amended	1863	(See 32 Ky R.)
16 KAR 6:030		
Amended	1866	(See 32 Ky.R.)
16 KAR 7.010		
Amended	1868	(See 32 Ky.R)
40 KAR 2:350	1916	(See 32 Ky.R.)
102 KAR 1:175		
Amended	1873	(See 32 Ky.R.)
103 KAR 1:050		
Amended	2005	(See 32 Ky R.)
109 KAR 12:011	1917	
200 KAR 5.021		
Amended	1875	(See 32 Ky.R.)
200 KAR 5:080	2055	(See 32 Ky.R.)
200 KAR 5:309		
Amended	1876	(See 32 Ky.R.)
200 KAR 14:011		
Amended	1878	(See 32 Ky R.)
200 KAR 14.081		
Amended	1880	(See 32 Ky.R.)
200 KAR 38:050	1918	(See 32 Ky.R.)
201 KAR 9:018		
Amended	1532	
Amended	1981	(See 32 Ky.R.)
201 KAR 18 030	1882	(See 32 Ky.R.)
201 KAR 18 072	1920	(See 32 Ky R.)
201 KAR 18:092	1921	(See 32 Ky.R.)
201 KAR 19:085		
Amended	1535	
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201 KAR 30:150	2056	(See 32 Ky.R.)
201 KAR 30:160	2057	(See 32 Ky.R.)
201 KAR 30:170	2059	(See 32 Ky.R.)
201 KAR 30:180	2060	(See 32 Ky.R.)
201 KAR 30.190	2062	(See 32 Ky.R.)
301 KAR 2:049		
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301 KAR 2:082		
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301 KAR 2:111		
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301 KAR 2:142		
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301 KAR 2:144		
Amended	1707	
Amended	1984	(See 32 Ky.R.)

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301 KAR 2 178		
Amended	1711	(See 32 Ky.R)
301 KAR 2:179		
Amended	1715	
301 KAR 2 251		
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301 KAR 3.022		
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401 KAR 50.045		
Amended	1726	
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401 KAR 63:005		
Amended	1354	(See 32 Ky R.)
501 KAR 3.030		
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501 KAR 6:190		
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501 KAR 6:220		
Amended	1885	(See 32 Ky.R.)
501 KAR 7:010		
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501 KAR 7.020		
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501 KAR 7:030		
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501 KAR 7 090		
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503 KAR 1:110		
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503 KAR 3:010		
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702 KAR 6:100		
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702 KAR 7:065		
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785 KAR 1:130		
Amended	1897	(See 32 Ky.R.)
787 KAR 1:010		
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805 KAR 9:020	1467	6-8-05
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805 KAR 9.040	1470	6-8-05
805 KAR 9:050	1471	
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805 KAR 9:060	1472	
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805 KAR 9:070	1473	
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805 KAR 9:080	1475	
As Amended	1968	6-8-05
805 KAR 9:090	1477	6-8-05
805 KAR 9:100	1478	
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806 KAR 52:030	2068	
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815 KAR 7:125		
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815 KAR 8 020		
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815 KAR 8:045		
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815 KAR 15 080		
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815 KAR 25:080		
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815 KAR 35:015		
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815 KAR 35:060		
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907 KAR 1:360		
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(Note: Emergency regulations filed prior to 6/20/05 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. Emergency regulations filed on or after 6/20/05 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

103 KAR 28 051E	4	6-15-05
201 KAR 11 011E	190	7-13-05
201 KAR 11:121E	191	7-13-05
501 KAR 6.240E	8	6-1-05
806 KAR 14:007E	9	5-13-05
806 KAR 17:500E	11	5-13-05
902 KAR 4:030E	193	7-1-05
902 KAR 4:035E	195	7-1-05
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921 KAR 2:015E		6-21-05

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