ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 33, NUMBER 5
WEDNESDAY, NOVEMBER 1, 2006

ARRS - NOVEMBER 14, 2006 TENTATIVE AGENDA 1227
REGULATION REVIEW PROCEDURE 1230

EMERGENCIES:
Board of Elections 1231
Office of Insurance 1233
Cabinet for Health and Family Services 1241

AS AMENDED:
Education Professional Standards Board 1266
Department of Revenue 1283
Board of Dentistry 1283
Board of Licensure- Prof Engineers & Land Surveyors 1284
Board of Nursing 1286
Board of Physical Therapy 1292
Board of Licensure and Cert. for Dieticians & Nutritionists 1292
Department of Fish and Wildlife Resources 1294
Department of Agriculture 1300
Department of Corrections 1306
Transportation Cabinet 1306
Department of Education 1320
Department for Libraries and Archives 1322
Office of Insurance 1325
Cabinet for Health and Family Services 1326

AMENDED AFTER COMMENTS:
Justice Cabinet 1378
Office of Mine Safety and Licensing 1341
Kentucky Horse Racing Authority 1345
Cabinet for Health and Family Services 1360

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 13, 2006:
Board of Elections 1420
Auditor of Public Accounts 1422
Teachers' Retirement System 1427
Board of Medical Licensure 1430
Board of Physical Therapy 1431
Department of Corrections 1433
Cabinet for Health and Family Services 1434

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 13, 2006:
Department of Veterans' Affairs 1464
Board of Medical Licensure 1468
Office of Insurance 1471
Cabinet for Health and Family Services 1479

OCTOBER 10, 2006 MINUTES OF THE ARRS 1482
OTHER COMMITTEE REPORTS 1488

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... E - 2
KRS Index ..... E - 14
Subject Index ..... E - 22

MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet Tuesday, November 14, 2006 at 10 a m , in Room 125 of the Capitol Annex Building, Frankfort, Kentucky See tentative agenda on pages 1227-1229 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2004 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 31, Kentucky Register, page 318 (short form: 31 Ky.R. 318).

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	

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
© 2005 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator David L. Williams
Senate President

Representative Jody Richards
House Speaker

Senate and House Members

Senator Katy Kratz Stine
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator Dan Kelly
Majority Floor Leader

Representative Rocky Adkins
Majority Floor Leader

Senator Ed Worley
Minority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Senator Richie Sanders, Jr.
Majority Caucus Chairman

Representative Robert R. Damron
Majority Caucus Chairman

Senator Johnny Ray Turner
Minority Caucus Chairman

Representative Bob DeWeese
Minority Caucus Chairman

Senator Daniel Seum
Majority Whip

Representative Joe Barrows
Majority Whip

Senator Joey Pendleton
Minority Whip

Representative Ken Upchurch
Minority Whip

Robert Sherman, Director
Charlie LeCompte, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members	Staff
Senator Richard L. "Dick" Roeding, Co-Chair	Dave Nicholas
Representative Tanya Pullin, Co-Chair	Emily Caudill
Senator Alice Kerr	Donna Little
Senator Joey Pendleton	Sarah Amburgey
Senator Gary Tapp	Karen Howard
Representative Jimmie Lee	Laura Milam
Representative Jim Bruce	Jenifer Harrison
Representative Jon David Reinhardt	Ellen Steinberg
	Emily Harkenrider

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 14, 2006 at 10 a.m. in Room 125, Capitol Annex

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
Division of Regulatory Services

Seed

12 KAR 1:114. Repeal of 12 KAR 1:115.

EDUCATION PROFESSIONAL STANDARDS BOARD

Internship

16 KAR 7:020. Kentucky Principal Internship Program.

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs

Certification

17 KAR 4:010. Veteran's Service Organization Burial Honor Guard Program.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation

General Administration

103 KAR 1:092. General Administration Policies and Circulars.
103 KAR 1:130. Taxation of federal and certain non-federal obligations.

Income Tax; Corporations

103 KAR 16:290. Apportionment; property factor.
103 KAR 16.352. Corporation Income Taxes Policies & Circulars.
103 KAR 16.360. Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.
103 KAR 16:370. Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.
103 KAR 16:380. Finance Lease Property.
103 KAR 16.390. Attachment for Corporate Officer Information - Form 720, Form 720S and Form 765, Schedule Q.

Income Tax; Individual

103 KAR 17:120. Estimated tax penalty.
103 KAR 17:130. Individual Income Tax - Military Personnel - Nonresidents.
103 KAR 17:140. Individual Income Tax - Reciprocity - Nonresidents.

Income Tax Withholding

103 KAR 18:172. Withholding Tax Circulars.
103 KAR 18:180. Kentucky Industrial Revitalization Act Job Revitalization Assessment Fees.
103 KAR 18.190. Kentucky Rural Economic Development Act Job Development Assessment Fee.
103 KAR 18 200. Kentucky Industrial Developmental Act Job Development Assessment Fee.
103 KAR 18 210. Kentucky Jobs Development Act Service and Technology Job Creation Assessment Fee.
103 KAR 18 220. Kentucky Economic Opportunity Zone Job Development Assessment Fee.

Corporation License Tax

103 KAR 20.035. Corporation License Tax Policies & Circulars.

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:150 & E. Collection of sales tax on certain motor vehicle sales. ("E" expires 02/26/07)

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy

Board

201 KAR 28:090. Renewals.
201 KAR 28:220. Per diem of board members.

COMMERCE CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2 015. Feeding of wildlife.
301 KAR 2.225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 02/03/07)
301 KAR 2 226 & E. Youth waterfowl, moorhen and gallinule hunting seasons. ("E" expires 02/03/07)

Hunting and Fishing

301 KAR 3.010. Public use of Wildlife Management Areas.
301 KAR 3:100. Special commission permits.

Water Patrol

301 KAR 6 020. Boating safety equipment.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Environmental Services

Structural Pest Control

302 KAR 29:050 & E. Commercial structural pest control and fumigation. ("E" expires 1/20/07) (Hearing/Written Comments)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water

Water Resources
401 KAR 4:060. Stream construction criteria.

Division for Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards
401 KAR 51:210. CAIR NOx Annual Trading Program. (Hearing Held in September)
401 KAR 51:220. CAIR NOx Ozone Season Trading Program. (Hearing Held in September)
401 KAR 51:230. CAIR SO2 Trading Program. (Hearing Held in September)

JUSTICE AND PUBLIC SAFETY CABINET
Office of Investigations

Abuse Investigation
500 KAR 13:020. Office of Investigations. (Written Comments Received, SOC due 10/13)

Department of Corrections

Office of the Secretary
501 KAR 6:130. Western Kentucky Correctional Complex.

Department of Juvenile Justice
Treatment Program for Juveniles with Sexual Behavior Problems and Offenses

Child Welfare
505 KAR 1:160. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders. (Written Comments Received)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

Occupational Safety and Health
803 KAR 2:403 & E. Occupational health and environmental controls. ("E" expires 02/20/07)
803 KAR 2:417. Steel Erection.
803 KAR 2:422. Rollover protective structures; overhead protection.
803 KAR 2:425 & E. Toxic and hazardous substances. ("E" expires 02/20/07)
803 KAR 2:500 & E. Maritime employment. ("E" expires 02/20/07)
803 KAR 2:600 Occupational safety and health standards for agriculture.

Office of Alcoholic Beverage Control

Licensing
804 KAR 4:170. Through transporter's.
804 KAR 4:230. Extended hours supplemental licenses.
804 KAR 4:240. Registration of brands.
804 KAR 4:250. Special temporary licenses.
804 KAR 4:330. Procedures for violations of KRS 244.165.
804 KAR 4:340. Brew-on-premises license.
804 KAR 4:350. Out-of-state brewer license.
804 KAR 4:380. Small farm winery license application and operations.
804 KAR 4:385. Using the word "Kentucky" on wine labels prohibited - exceptions.
804 KAR 4:400. ABC basic application form incorporated by reference.
804 KAR 4:410. ABC schedules forms incorporated by reference.
804 KAR 4:420. Small farm winery wholesaler license application forms.

Department of Natural Resources
Office of Mine Safety and Licensing

Sanctions and Penalties
805 KAR 8:060 & E. Criteria for the imposition and enforcement of sanctions against licensed premises. ("E" expires 2/5/2007) (Written Comments Received)

Kentucky Horse Racing Authority

Thoroughbred Racing
810 KAR 1:080. International wagering hubs. (Amended After Comments) (Deferred from June)

Harness Racing
811 KAR 1:005. Definitions. (Hearing/Written Comments)
811 KAR 1:010. Associations. (Deferred from October)
811 KAR 1:015. Race officials. (Deferred from October)
811 KAR 1:020. Registration and identification of horses. (Deferred from October)
811 KAR 1:025. Farm or stable name. (Deferred from October)
811 KAR 1:030. Eligibility and classification. (Deferred from October)
811 KAR 1:035. Claiming races. (Deferred from October)
811 KAR 1:040. Stakes and futurities. (Deferred from October)
811 KAR 1:045. Entries. (Deferred from October)
811 KAR 1:050. Entries and starters; split races. (Deferred from October)
811 KAR 1:055. Declaration to start; drawing horses. (Deferred from October)
811 KAR 1:060. Postponement; rescheduling, purses. (Deferred from October)
811 KAR 1:065. Starting. (Deferred from October)
811 KAR 1:075. Racing and track rules. (Deferred from October)
811 KAR 1:080. Placing; money distribution. (Deferred from October)
811 KAR 1:085. Conduct of racing. (Deferred from October)

811 KAR 1.090. Medication; testing procedures; prohibited practices. (Hearing/Written Comments)
811 KAR 1:095. Disciplinary Measures and Penalties. (Hearing/Written Comments)
811 KAR 1:100. Protests. (Deferred from October)
811 KAR 1:105. Review and appeal. (Deferred from October)
811 KAR 1:110. Timing and records. (Deferred from October)
811 KAR 1:130. Security; persons permitted on licensed premises. (Deferred from October)
811 KAR 1:135. Identification cards and badges. (Deferred from October)
811 KAR 1:140. Post time; entry number. (Deferred from October)
811 KAR 1:145. Number of races per program. (Deferred from October)
811 KAR 1:155. Postponements; decision on. (Deferred from October)
811 KAR 1:160. Association with undesirables prohibited. (Deferred from October)
811 KAR 1:171. Repeal of 811 KAR 1:165, 1:170, 1:180 and 1:190. (Deferred from October)
811 KAR 1:175. Tack inspection. (Deferred from October)
811 KAR 1:195. Track deductions from wagers. (Deferred from October)
811 KAR 1:215. Kentucky Standardbred Development Fund. (Deferred from October)
811 KAR 1:220. Harness racing at county fairs. (Hearing/Written Comments)
811 KAR 1:225. Substance abuse by Authority employees and licensees. (Deferred from October)

Department of Natural Resources
Office of Mine Safety and Licensing

Kentucky Mine Safety Review

825 KAR 1:020 & E. Administrative hearings procedures. ("E" expires 2/5/2007) (Written Comments Received, SOC due 10/13)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need

Certificate of Need

900 KAR 6.030 & E. Certificate of need expenditure minimums. ("E" expires 03/07/07)

Office of Inspector General

Health Services and Facilities

902 KAR 20 240. Comprehensive physical rehabilitation hospital services.

Department for Medicaid Services
Division of Administration and Financial Management

Medicaid Services

907 KAR 1:011 & E. Technical eligibility requirements. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1.012 & E. Inpatient hospital services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1.014 & E. Outpatient hospital services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:026 & E. Dental Services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:031 & E. Payments for home health services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:038 & E. Hearing and vision program services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:155 & E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 02/28/07)
907 KAR 1:350 & E. Coverage and payments for organ transplants. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement. ("E" expires 1/24/2007) (Public Hearing in August, SOC due 10/13)
907 KAR 1:604 & E. Recipient cost-sharing. ("E" expires 1/24/2007) (Public Hearing in August, SOC due 10/13)
907 KAR 1:626 & E. Reimbursement of dental services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 1:645. Resource standards for Medicaid.
907 KAR 1:650. Trust and transferred resource requirements for Medicaid.
907 KAR 1:900 & E. KyHealth Choices Benefit Packages. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)

Payment and Services

907 KAR 3:005 & E. Physician's services. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 3:010 & E. Reimbursement for physician's services. ("E" expires 02/28/07)
907 KAR 3:125 & E. Chiropractic services and reimbursement. ("E" expires 1/24/2007) (Public Hearing in August, SOC due 10/13)
907 KAR 3:130 & E. Medical Necessity and clinically appropriate determination basis. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)
907 KAR 3:181 & E. In-state Inpatient Hospital Special Reimbursement Increase. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)

Department for Community Based Services
Division of Child Support

Child Support

921 KAR 1:420. Child Support Distribution.

Department for Community Based Services

Day Care

922 KAR 2:170 & E. STARS for KIDS NOW Program for Type I licensed child care centers. ("E" expires 12/27/2006) (Deferred from September)
922 KAR 2:210 & E. STARS for KIDS NOW Program for Type II licensed child care centers. ("E" expires 1/24/2007) (Written Comments Received, SOC due 10/13)

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, OCTOBER 13, 2006

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

STATEMENT OF EMERGENCY
31 KAR 4:140E

The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, allows states to implement the Department of Defense Interim Voting Assistance System (IVAS) to expedite the absentee voting process using existing e-mail technology. This emergency amendment to the administrative regulation must be placed into effect immediately to apply to the general election and to not interfere with the constitutional right to vote of members of the military and overseas citizens. This amendment to the administrative regulation updates the forms necessary to carry out the procedures established by this administrative regulation. The reasons why an ordinary amendment to the administrative regulation is not sufficient: An ordinary amendment to the administrative regulation is not sufficient because it may not be effective until after the general election or until after absentee voting has begun for the general election, and may interfere with the constitutional right to vote of members of the military and overseas citizens. 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
TREY GRAYSON, Chairman

STATE BOARD OF ELECTIONS
(Emergency Amendment)

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

RELATES TO: KRS 117.079, 117.085, 369.107[(1)], and 42 U.S.C. 1973[ff-1]
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973ff-1
EFFECTIVE: October 13, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, authorizes the Department of Defense to implement an interim voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing e-mail technology. This administrative regulation implements IVAS.

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card [Postcard Absentee Ballot] Application, Standard Form 76, electronically mailed to the county clerk from IVAS.

(2) "Instructions to voter sheet" means the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot, SBE 46A [form containing instructions for voting].

(3) "IVAS" means the Department of Defense Interim Voting Assistance System.

(4) "Registered voter" means a resident of Kentucky who is eligible to vote and is a deployed member of the Armed Forces of the U.S.

(5) "Voter verification sheet" means the form the registered voter signs and the voter assistance oath.

Section 2. Processing a Completed Application by Electronic Mail. (1) If the absentee ballot application is received by electronic mail from IVAS less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the completed absentee ballot application is received by electronic mail from IVAS not less than seven (7) days before the election, then the county clerk shall affix his seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's [voter] eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy in Portable Document Format (PDF) of the original absentee ballot. The original absentee ballot is then marked "electronically mailed to IVAS" and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent via electronic mail to IVAS, along with the Instructions to voter sheet and the voter verification sheet.

Section 3. Voter's Instructions on Completing an Electronic Absentee Ballot Received From IVAS. (1) When a voter receives an absentee ballot via electronic mail, the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on election day, to the county clerk through the mail in order to be counted.

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

(a) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005) ["Federal Post Card Application, Standard Form 76A (1-2000)];

(b) SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot" (December 2005 edition) ["Instructions to Voter Sheet, SBE 46A (9/04)"]; and

(c) SBE 46B - "Voter Verification Sheet" (December 2005 edition) ["Voter Verification Sheet, SBE 46B (9/04)]."

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

TREY GRAYSON, Chair
GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: September 19, 2006
FILED WITH LRC: October 13, 2006 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-

tive regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079, and KRS 117.085 to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel who are deployed overseas, many times on short notice, causing delays in regular mail service and access to facsimile machines in some cases is impractical.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the most recent versions of the Federal Post Card Application, the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot Sheet, and the Voter Verification Sheet.

(b) The necessity of the amendment to this administrative regulation: This amendment is also necessary to update the latest edition of the forms incorporated by reference that carry out these procedures established by this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the latest edition of the forms incorporated by reference that carry out these procedures established by this regulation in accordance with KRS 117.015(1), 117.079 and 42 U.S.C. 1973ff-1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the elections officials with the most recent versions of the federal forms and the state forms to assist in the process established by this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are members of the Armed Forces and deployed overseas and all county clerks in counties that have electronic mail capabilities to enter the Department of Defense Interim Voting Assistance System. There are approximately 72 counties that have the capability of entering the system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The county clerks will have to establish a link to the Interim Voting Assistance System Web site, a user id and password to participate in the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs for the program are minimal and already included in the existing budget of these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The county clerks and the voters who are members of the Armed Forces and deployed overseas will benefit from the expedited absentee voting process established by this regulation.

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

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All county clerks in counties that have electronic mail capabilities to enter the Department of Defense Interim Voting Assistance System. There are sixty-eight (68) counties that have the capability of entering the system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 117.015(1), 117.079 and. 42 U.S.C. 1973ff-1

4. Estimate the effect of this administrative regulation on the expenditures and revenues of the state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenues for the local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenues for the local governments.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1

(2) State compliance standards: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.

(3) Minimum or uniform standards contained in the federal

mandate: This administrative regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(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: Not applicable.

STATEMENT OF EMERGENCY
806 KAR 17:540E

Part XXIII of HB 380 included provisions for a pilot small business employer insurance subsidy program, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program. Pursuant to this new legislation, 2006 Ky. Acts ch. 252, Part XXIII, the Office of Insurance is required to establish an ICARE Program list of medical conditions representing the top twenty (20) high-cost conditions in the small group market. In January 2007, a small group employer with an employee who has been diagnosed with one (1) of the high-cost conditions may be eligible for a sixty (60) dollar per month health care incentive payment which is higher than the forty (40) dollar per month health care incentive payment that will be paid to an employer who has not offered health insurance to employees in the previous twelve (12) months. In order to establish the list of high-cost conditions for employers desiring participation in the ICARE Program prior to January 1, 2007, the effective date of sections 1 through 8 of 2006 Ky. Acts ch. 252, Part XXIII, it is necessary to promulgate this emergency 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 October 13, 2006. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
TERESA J. HILL, Secretary
CHRISTOPHER LILLY, Commissioner

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Emergency Administrative Regulation)

806 KAR 17:540E. ICARE Program high-cost conditions.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b)

EFFECTIVE: October 13, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to 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. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(2) "High-cost condition" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5).

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

Section 2. List of High-Cost Conditions. An ICARE Program high-cost condition shall:

(1) Be diagnosed or treated by a health care provider legally authorized to diagnose the condition within the past five (5) years and documented in the medical record of an eligible employee; and

(2) Include one (1) of the following medical conditions:

(a) Anoxic brain injury;
(b) Ascites;
(c) Back disorder, which shall be limited to:
1. Lumbar or Lumbosacral disc degeneration; or
2. Lumbar disc displacement;
(d) Brain tumor;
(e) Burn, which shall be limited to full-thickness skin loss;
(f) Cancer, which shall be limited to:
1. Ewing's sarcoma;
2. Hodgkin's disease;
3. Leukemia;
4. Lymphoid leukemia;
5. Malignant neoplasm of breast;
6. Metastatic cancer;
7. Myeloid leukemia; or
8. Primary cancer;
(g) Cirrhosis of the liver;
(h) Coagulation defect, including hemophilia;
(i) Endocrine disorder, which shall be limited to:
1. Insulin dependent diabetes mellitus; or
2. Enzyme deficiency disorder;
(j) Heart condition, which shall be limited to:
1. Acute myocardial infarction;
2. Angina pectoris;
3. Cardiac valve disorder;
4. Cardiomyopathy;
5. Congenital cardiac anomaly;
6. Coronary insufficiency;
7. Coronary occlusion;
8. Heart failure;
9. Injury to heart or lung;
10. Ischemic heart disease;
11. Pulmonary atresia;
12. Pulmonary hypertension; or
13. Status post open-heart surgery;
(k) Hypersomnia with sleep apnea;
(l) Lung condition, which shall be limited to:
1. Chronic airway obstruction;
2. Disease of the lung; or
3. Post inflammatory pulmonary fibrosis;
(m) Kidney condition, which shall be limited to:
1. Chronic renal failure,
2. End stage renal disease; or
3. Polycystic kidney;
(n) Morbid obesity;
(o)Multiple sclerosis;
(p) Organ or tissue replaced by transplant;
(q) Psychotic disorder;
(r) Rhabdomyolysis;
(s) Stroke; or
(t) Trauma, which shall be limited to:
1. Fracture or complete lesion of cord;
2. Motor vehicle accident; or
3. Multiple trauma.

Section 3. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 11, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

CONTACT PERSON: Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the Insurance Coverage, Affordability Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a list of 20 high-cost conditions that will be used to qualify an eligible small business employer for an ICARE Program health care incentive payment if the employer has an eligible employee who has been diagnosed with or treated for 1 of the high-cost conditions within 5 years of the employer's ICARE Program application date.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Kentucky Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the Office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based upon information received from ICARE Program participating insurers offering health benefit plans in the small group market.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions as required under 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b).

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: 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: Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program and an undetermined number of these businesses may qualify for the ICARE Program based upon an employee with a high-cost condition.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Small business employees and employers are not required to take any action due the promulgation of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) Small business employees and employers will not incur any cost directly related to the promulgation of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If a small business employer has an employee with a high-cost condition as established in this administrative regulation, that small business employer may qualify for a health care incentive payment from the ICARE Program. Eligible employees with high-cost conditions who have not had employer-sponsored health insurance coverage in the past may now be eligible for and have access to coverage under an ICARE Program participating employer.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis is believed to be minimal, if any, for the Office of Insurance. However, twenty million dollars have been allocated from the General Fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The primary source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. However, twenty million dollars have been allocated from the General Fund for the ICARE Program.

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

(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 increase any fees

(9) TIERING. Is tiering applied? No. Tiering is not applied because this administrative regulation establishes a list of high-cost medical conditions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability, and Relief for Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the Office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based on information received from ICARE Program participating insurers offering health benefit plans in the small group market.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance should not incur costs to administer this administrative regulation for the first year. The ICARE Program will be funded by a $6.5 million appropriation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance will not incur costs to administer this administrative regulation for subsequent years. The ICARE Program will be funded by a $13.5 million appropriation for

the second year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

STATEMENT OF EMERGENCY
806 KAR 17:545E

Part XXIII of HB 380 included provisions for a pilot small business employer insurance subsidy program, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, which will be effective on January 1, 2007. Pursuant to this new legislation, 2006 Ky. Acts ch. 252, Part XXIII, sections 1 through 8, the Office of Insurance is required to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program as well as guidelines for employer groups, eligibility criteria, health care incentive payment procedures, program participating employer reporting requirements, and administrative guidelines for the ICARE Program. In order to establish requirements for the ICARE Program and inform the regulated entities and beneficiaries of program requirements that directly affect them prior to January 1, 2007, the effective date of 2006 Ky. Acts ch. 252, Part XXII, sections 1 through 8, and to enable eligible employers to apply for enrollment in the ICARE Program and receive health care incentive payments beginning in January 2007, it is necessary to promulgate this emergency 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 October 13, 2006. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
THERESA J. HILL, Secretary
CHRISTOPHER LILLY, Commissioner

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Emergency Administrative Regulation)

806 KAR 17:545E. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs.1-8, 13, 22

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)

EFFECTIVE: October 13, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to 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. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3) require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include:

1. Employers quarterly unemployment tax statement; or
2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(4) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(5) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(6) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch 252, Part XXIII, secs. 2(3) and 4(1).

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(9) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5); and

(b) Established in 806 KAR 17.540.

(10) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(13) "Insurer" is defined in KRS 304.17A-005(24).

(14) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2).

(15) "Owner" means an individual with an ownership interest in the business.

(16) "Qualified health benefit plan" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2), the office shall consider:

(a) Individuals currently employed by the employer; and

(b) Individuals with an ownership interest.

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for an individual. To determine the average annual salary of the employer group pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(4), the office shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of eligible employees.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee without an ownership interest in the business.

Section 3. Application for Participation in the ICARE Program. (1) An eligible employer who desires to participate in the ICARE Program:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within thirty-one (31) days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's previous ICARE Program year.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications as identified in the ICARE Program application from employees; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the office shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the employer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the office shall provide the employer with a written or electronic notification of:

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) The information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the office for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the office under the program eligibility category as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

Section 5. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the office within thirty (30) days of the date of the change.

Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the office shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the office:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in section 2 of this administrative regulation and 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8. Within thirty (30) days of receiving a request for renewal, the office shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) Upon review of a request for renewal of ICARE Program participation, the office determines that the employer ceases to meet an eligibility requirement as established in section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2006 Ky. Acts ch. 252 Part XXIII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the application to the ICARE Program;

(d) The employer requests termination from the ICARE Program; or

(e) The employer ceases business operations in Kentucky.

(2) An ICARE Program participating employer may be terminated from participation in the ICARE Program if:

(a) The employer fails to submit requested information to the office within prescribed timeframes as established in this administrative regulation;

(b) The employer fails to cooperate in an annual review as described in Section 10 of this administrative regulation;

(c) The ICARE Program funding is insufficient; or

(d) Upon completion of an annual review as established in Section 10 of this administrative regulation, the office determines that the employer did not meet the eligibility requirements of Section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8 for the ICARE Program year reviewed.

(3) Prior to terminating an ICARE Program participating employer, the office shall provide written notification to the employer, which includes:

(a) The reason for termination as identified in subsections (1) or (2) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative regulation or termination by the office pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and provide the basis for reconsideration, including any new relevant information.

(2) The office shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the office's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is received by the office from the ICARE Program participating insurer pursuant 806 KAR 17:555, section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The office shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the

office based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the office all health care incentive payments received by the employer for the period of ineligibility determined by the office.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1)

Section 10. Annual Review. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:555 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 11. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

Section 12. Incorporation by Reference. (1) "ICARE-APP-1", (10/2006), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p m. Forms may also be obtained on the office Web site at http://doi.ppr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary Date

APPROVED BY AGENCY: October 11, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

CONTACT PERSON: Melea Rivera, 215 West Main Street, P.O. Box 517 Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part XXIII secs. 1-8 in creating administrative regulations to further clarify and establish the various processes for the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: 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: There are 40,716 Kentucky licensed health insurance agents who assist employers of small business obtain health insurance coverage. Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers and agents assisting employers will be required to complete the incorporated ICARE Program application and submit the application and other required documentation within the prescribed timeframes. Employers with high-cost conditions will be required to complete the ICARE Program High-Cost Condition Certification, which is part of the ICARE Program application. Additionally, an ICARE Program participating employer will be required to notify the Office of Insurance of any changes in the employers' application during the ICARE Program year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that costs associated with submitting an ICARE Program application and notifying the Office of Insurance of any changes will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents, who comply with the requirements of this administrative regulation will be able to assist small group employers who are eligible in obtaining health care incentive payments to defray some of the cost of health insurance. Employers of small groups that meet and comply with the requirements of this administrative regulation may participate in the ICARE Program and receive a monthly health care incentive payment for each eligible employee.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis are projected to be $145,670 for the Office of Insurance. $20 million have been allocated from the General Fund for the ICARE Program.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are projected to be $161,550 for the Office of Insurance. $20 million have been allocated from the general fund for the ICARE Program.

(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 will be the budget of the Office of Insurance. Twenty million dollars have been allocated from

the general fund to administer the ICARE Program.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all employers who wish to qualify for the ICARE Program. Furthermore, all Kentucky licensed health insurance agents who assist employers with the ICARE Program application will be required to comply with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, on an initial basis (fiscal year 2006-07) are estimated to be $145,670 for the Office of Insurance. An appropriation of $20 million from the General Fund will fund the program for two years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, are estimated to be $161,550 for the Office of Insurance for fiscal year 2007-08. An appropriation of $20 million from the General Fund will fund the program for two years.

Note: 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
806 KAR 17:555E

Part XXIII of HB 380 included provisions for a pilot small business employer insurance subsidy program, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, which will be effective on January 1, 2007. Pursuant to this new legislation, 2006 Ky. Acts ch. 252, Part XXII, sections 1 through 8, the Office of Insurance is required to establish ICARE Program participating insurer reporting requirements, administrative guidelines, and the manner and content of an insurer's disclosure regarding the availability of the health insurance purchasing program as authorized in 42 U.S.C. sec.1396e and the ICARE Program. In order to establish requirements for the ICARE Program and inform the regulated entities and beneficiaries of requirements that directly affect them prior to January 1, 2007, the effective date of 2006 Ky. Acts ch. 252, Part XXIII, sections 1 through 8, and to enable eligible employers to apply for and receive health care incentive payments from the ICARE Program beginning in January 2007, it is necessary to promulgate this emergency administrative regulation. Furthermore, ICARE Program participating insurers need immediate regulatory guidance for the identification of previously approved health benefit plans and development of new plans that may be designated by the Office as ICARE Program qualified health benefit plans, as well as guidance for the development of a disclosure required under 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1). This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary emergency administrative regulation was filed with the Regulations Compiler on October 13, 2006. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
TERESA J. HILL, Secretary
CHRISTOPHER LILLY, Commissioner

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Emergency Administrative regulation)

806 KAR 17:555E. ICARE Program requirements.

RELATES TO: KRS 304.14-120, 304.14-430 - 304.14-450, 304.17A-095 - 304.17A-0954, 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22, 42 U.S.C. sec.1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch.252, Part XXIII, secs. 2(5) and 2(8)

EFFECTIVE: October 13, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) 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. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1) requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. sec.1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2006 Ky. Acts

ch. 252, Part XXIII, sec. 1(1).

(4) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(5) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(6) "Enriched health benefit plan" means a health benefit plan which:

(a) Is not a basic or consumer-driven health benefit plan; and

(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

(9) "Health risk assessment" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(4)

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

(13) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec.1 (7).

(14) "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Requirements of an ICARE Program Participating Insurer. (1) If an employer discontinues a health benefit plan offered by an ICARE Program participating insurer that is not a qualified health benefit plan and obtains coverage under a qualified health benefit plan offered by the same ICARE Program participating insurer, the insurer shall be limited to adjusting the risk factors in determining the new premium rate for the employer group to the guideline established under KRS 304.17A-0952(5)(b).

(2) An ICARE Program participating insurer shall:

(a) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the office, conduct a health risk assessment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 3(4) for each eligible employee of the employer; and

(b) Within sixty (60) days of conducting a health risk assessment as established in paragraph (a) of this subsection, and pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec 3(4), offer the following:

1. A wellness program;
2. Case management services; and
3. Disease management services.

Section 3. Qualified Health Benefit Plans. (1) An ICARE Program participating insurer shall notify the office in writing of any health benefit plans previously approved by the office that meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4). The notification shall:

(a) Include the approved form number of each health benefit plan;

(b) Identify each health benefit plan as a:

1. Consumer-driven health benefit plan;
2. Basic health benefit plan; or
3. Enriched health benefit plan; and

(c) Include a request that an identified health benefit plan be designated as a qualified health benefit plan by the office.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4), the insurer shall

(a) Submit for approval by the office, a:

1. Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 - 304.14-450, and 806 KAR 14:007; and

2. Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable; and

(b) Include with a filing identified in paragraph (a) of this subsection, a cover letter clearly requesting that a new or amended health benefit plan be designated as a qualified health benefit plan. If the ICARE Program participating insurer has complied with subsections (1) and (2) of this section, the office shall:

(c) Designate a health benefit plan approved by the office as a qualified health benefit plan; and

(d) Notify the insurer of the office designation.

Section 4. Requirements of Disclosure. Pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1), a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format; include information relating to availability of the.

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621."; and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;

2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1);

3. A list of qualified health benefit plans designated by the office and offered by the insurer;

4. Limited enrollment of eligible employers under the ICARE Program; and

5. Office web site and toll-free telephone number of the ICARE Program; and

(3) Beginning on January 1, 2007, and annually thereafter, be submitted to the office for review.

Section 5. ICARE Program Data Reporting Requirements. (1)(a) No later than January 1, 2007, an ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

1. Name;
2. Telephone and fax numbers; and
3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the office within fifteen (15) days of the date of the change. Beginning on January 15, 2007, and monthly thereafter, the office shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Beginning on January 1, 2007, and monthly thereafter, each ICARE Program participating insurer shall collect the following information for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group;

(c) Name of the qualified health benefit plan covering eligible employees;

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

(f) Number of eligible employees covered under the qualified health benefit plan; and

(g) Termination date, if applicable.

(4) Beginning on January 20, 2007, and no later than the 20th day of each month thereafter, an ICARE Program participating insurer shall report to the office information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1 (10/2006).

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the office, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;
2. Name of the employer group; and
3. Average annual premium paid; and

(b) Be submitted in a format as established in the form, ICARE Report-1 (10/2006):

1. No later than February 1, for the previous calendar year; and
2. In an electronic or written format.

Section 6. Annual Office Review of ICARE Books and Records. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17.545 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

Section 8. Incorporation by Reference. (1) "ICARE Report-1", (10/2006), is incorporated by reference.

(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.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary

APPROVED BY AGENCY: October 11, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

CONTACT PERSON: Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-051, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program as authorized under 42 U.S.C. sec 1396e and ICARE Program, data reporting, and annual review by the Office of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports, and the annual review by the office. This administrative regulation is also necessary to clarify the provisions of 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, to prevent differing interpretations among health insurers in the small group market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304 2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts 252, Part XXIII, sec. 8 requires the office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Additionally this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5).

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 16 insurers offering health benefit plans in the small group and employer-organized association markets.

(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, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 16 insurers that offer health insurance coverage in the small group and employer-organized association markets will be required to disclose the availability of the HIPP and ICARE Programs, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Each of the 16 ICARE Program participating insurers will also be required to file the disclosure annually with the Office of Insurance and pay a $5 forms filing fee for each form filed. Insurers will also be required to identify existing health benefit plans as the product they will offer to ICARE participating employers if designated as ICARE Program qualified health benefit plans by the Office or file new products and pay a $5 forms filing fee for each form filed and a $100 fee for each new rate filing. Finally, each ICARE Program participating insurers will be required to submit monthly and annual reports to the office and cooperate in any annual review by the office.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An ICARE Program participating insurer will be required to offer (to small group employers) health benefit plans designated as ICARE Program qualified health benefit plans and notify the Office of their unique ICARE Program plans. Currently, an insurer is required to pay a standard $5 filing fee for each new form filed with the Office and a $100 filing fee for each new rate filed. If an insurer chooses to use previously approved health benefit plans as ICARE qualified health benefit plans the insurer would not incur any costs relating to forms and rate filings. However, if an insurer chooses to create new ICARE Program qualified health benefit plans, the insurer will be required to submit the plans for approval and designation by the Office and pay the standard forms filing fee of $5 and rate filing fee of $100 for each form and rate filing submitted. Additionally, to comply with reporting and disclosure requirements, insurers may incur additional costs if their operating systems must be altered to generate reports and develop and distribute the disclosures relating to the HIPP and ICARE Programs. These costs may vary among insurers and are not available from insurers at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers will be in compliance with 2006 Ky. Acts 252, Part XXIII, secs.1 through 8 and this administrative regulation.

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

(a) Initially: Preliminary estimates of administrative costs of the ICARE Program are projected to be $145,670 for fiscal year 2006-2007 for the Office of Insurance.

(b) On a continuing basis: Preliminary estimates of administrative costs of the ICARE Program are projected to be $161,550 for fiscal year 2007-2008 for the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(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 will be the budget of the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in Office of Insurance 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 directly or indirectly increase any fees charged by the Office of Insurance.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering a health benefit plan in the small group market.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Melea Rivera

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability, and Relief to Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8 requires the Office to establish by administrative regulation the manner and content of a disclosure by insurers, offering health insurance coverage in the small group and employer-organized association markets, relating to availability of the Health Insurance Purchasing Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance has estimated the costs of administering this administrative regulation to be $145,670 for the fiscal year 2006-2007.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance has estimated the costs of administering this administrative regulation for subsequent fiscal year to be $161,550.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 1:160E

This emergency administrative regulation is being promulgated to establish the consumer-directed services option created by KRS 205.5606. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and nonmedical home- and community-based services and supports. This action must be taken on an emergency basis to meet a deadline for implementation of a requirement established by state law. 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
MARK D. BIRDWHISTELL, Secretary

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

907 KAR 1:160E. Home and community based waiver services.

RELATES TO: KRS 205.520(3), 205 5605-205 5607

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205 5606, 205 635, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n[, ~~EO 2004-726~~]

EFFECTIVE: October 3, 2006

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 to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions for home and community based waiver services. The amendment establishes a consumer directed services option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066[, ~~Section 4~~].

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis [~~of a health nature~~] that ensure optimal functioning of an HCB recipient who does not require twenty-four (24) hour care in an institutional setting [~~but do not require an HCB recipient to remain at a facility twenty-four (24) hours per day~~].

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts [~~acting~~] within his or her scope of practice and [~~who~~] is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:
a. A social worker;
b. A certified psychologist with autonomous functioning;
c. A licensed psychological practitioner;
d. A licensed marriage and family therapist; or
e. A licensed professional clinical counselor.

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(7) [~~(6) "Care planning" means a process whereby a plan of care is developed which specifies the amount, frequency, and duration of services to meet an HCB recipient's needs and contains provisions for reassessment for HCB waiver services.~~

~~(6)~~] "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) [~~or~~] Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(8) "Consumer" is defined by KRS 205.5605(2).

(9) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home- and community-based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(10) [~~(7)~~] "DCBS" means the Department for Community Based Services.

(11) [~~(8)~~] "Department" means the Department for Medicaid Services or its designee.

(12) "Electronic signature" is defined by KRS 369.102(8).

(13) [~~(9)~~] "HCB recipient" means an individual who:

(a) Is a recipient defined by KRS 205.8451(9) [~~Meets the criteria for a recipient as defined in KRS 205.8451~~];

(b) Meets the NF level of care criteria established [~~as defined~~] in 907 KAR 1:022; and

(c) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(14) "Home and community support services" means nonresidential and nonmedical home- and community-based services and supports that:

(a) Meet the consumer's needs; and

(b) Constitute a cost-effective use of funds.

(15) [~~(10)~~] "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services for individuals who meet the requirements of Section 4 of this administrative regulation.

(16) [~~the elderly and disabled.~~

~~(11)~~] "Home health agency" means a Medicare and Medicaid certified agency licensed in accordance with 902 KAR 20.081.

(17) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(18) "Licensed professional clinical counselor" or "LPCC" means a person licensed in accordance with KRS 335.500 to 335.599.

(19) [~~(12)~~] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9) [~~licensed practical nurse requirements established in 902 KAR 20.066~~]; and

(b) Works under the supervision of a registered nurse.

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

~~(14)~~] "NF" means nursing facility.

(21) [~~(15)~~] "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

(22) [~~(16)~~] "Normal child care[~~baby sitting~~]" means general care provided to a child which includes custody, control, and supervision.

(23) [~~(17)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(24) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(25) [~~means a person who meets the occupational therapist requirements established in 902 KAR 20:066.~~

~~(18)~~] "Physical therapist" is defined by KRS 327.010(2).

(26) "Physical therapist assistant" is defined by 201 KAR 22:001(13).

(27) [~~means a person who meets the physical therapist requirements established in 902 KAR 20:066.~~

~~(19)~~] "Physician assistant" or "PA" is defined in KRS 311.840(3).

(28) [~~(20)~~] "Plan of treatment" means a care plan used by an ADHC center.

(29) [~~(21)~~] "Registered nurse" or "RN" means as defined by KRS 314.011(5) [~~a person who meets the registered nurse requirements established in 902 KAR 20:066~~] and who has one (1) year or more experience as a professional nurse.

(30) "Representative" is defined by KRS 205.5605(6).

(31) "Self direct" means to choose independently to utilize CDO services and make all decisions associated with CDO services.

(32) "Sex crime" is defined by KRS 17.165(1).

(33) [~~(22)~~] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(34) "Speech-language pathologist" is defined by KRS 334A.020(3).

(35) "Support broker" means an agency that is designated by the department to assist a consumer in all aspects of CDO services.

(36) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Total monthly amount.

(37) "Violent crime" is defined by KRS 17.165(3).

[~~(23) "Speech pathologist" means a person who meets the speech pathologist requirements established in 902 KAR 20.066~~].

Section 2. Provider Participation. (1) In order to provide HCB waiver services, excluding consumer directed option services, a provider shall be a home health agency or ADHC center that provides services:

(a) Directly; or

(b) Indirectly through a subcontractor.

(2) [~~In order to provide HCB waiver services,~~] An out-of-state provider shall comply with the requirements of this administrative regulation [~~meet the same requirements as an in-state provider~~].

(3) A provider shall:

(a) Comply with the following administrative regulations and program requirements:

1. 902 KAR 20:081;

2. 907 KAR 1:671;

3. 907 KAR 1:672;

4. 907 KAR 1:673;

5. The Department for Medicaid Services Home and Community Based Waiver Services Manual; and

6. [~~902 KAR 20:081, 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673, the Department for Medicaid Services Home and Community Based Waiver Services Manual, and~~] The Department for Medicaid Services Adult Day Health Care Services Manual;

(b) Not enroll an HCB recipient for whom the provider [~~to whom they~~] cannot provide HCB waiver services;

(c) Be permitted [~~Have the freedom~~] to accept or not accept an HCB recipient;

(d) Implement a procedure to ensure that the following is reported [~~which ensures the reporting of all incidences which may include~~]:

1. Abuse, neglect, or exploitation of an HCB recipient in accordance with KRS Chapters 209 or 620;

2. A slip or fall;
3. [,] A transportation incident;
4. [,] Improper administration of medication;
5. [, or] A medical complication; or
6. An incident [3. Incidents] caused by the recipient, including:
a. [such as] Verbal or physical abuse of staff or other recipients;
b. [,] Destruction or damage of property; or
c. [of] Recipient self-abuse;
(e) Ensure a copy of each incident reported in accordance with paragraph (d) of this subsection [report] is maintained in a central file [by the provider and is] subject to review by the department;
(f) Implement a process for communicating the incident, the outcome, and the prevention plan to:
1. An HCB recipient, family member, or his responsible party; and
2. The attending physician, PA, or ARNP;
(g) Maintain documentation of any communication provided [Document the communication] in accordance with subsection (f) of this section. The documentation shall be:
1. Recorded in the HCB recipient's case record; and
2. Signed and dated by the staff member making the entry;
(h) Implement a procedure that ensures the reporting of a recipient or any interested party's [which ensures the reporting of] a complaint against the provider [an agency] or its personnel [by a recipient or any interested party];
(i) Inform a recipient or any interested party in writing of the provider's:
1. Hours of operation; and
2. Policies and procedures [of the agency];
(j) Not permit a staff member who has contracted a communicable disease to provide a service to an HCB recipient until the condition is determined by a physician to no longer [not to] be contagious; and
(k) Ensure that a staff member who provides direct services:
1. Demonstrates the ability to:
a. Read;
b. [,] Write;
c. [,] Understand and carry out instructions;
d. [, Record messages,] Keep simple records;[,] and
e. Interact with an HCB recipient when providing an HCB waiver service;
2. Be trained by an HCB waiver provider; [and]
3. Be supervised by an RN at least every other month; and
4. Submit to a criminal records check and not have pled guilty to or been convicted of committing a sex crime or a violent crime.
(4) An individual who provides home and community support services under the CDO program shall:
(a) Be selected by the consumer;
(b) Submit a completed MAP-074 to the consumer's support broker;
(c) Demonstrate proof of eligibility for employment in accordance with applicable state and federal labor, tax, and immigration laws;
(d) Be able to communicate effectively with the consumer or consumer's representative;
(e) Provide record-keeping services, including maintaining the consumer's financial records;
(f) Sign a confidentiality agreement;
(g) Report suspected abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030;
(h) Submit a written declaration to the support broker attesting that he or she is free of an infectious or contagious disease;
(i) Demonstrate competence to safely attend to the consumer as described in the plan of care;
(j) Successfully complete the self-directed and consumer-directed services training curriculum;
(k) Successfully complete a certified cardiopulmonary resuscitation and first aid training;
(l) Successfully complete training that is requested by the consumer and not identified in paragraph (i) or (k) of this subsection; and
(m) Be approved by the department.

Section 3. Maintenance of Records. (1) An HCB waiver provider shall maintain:
(a) A clinical record for each HCB recipient which shall contain the following:
1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351[A] and signed by the:
a. Assessment team; and
b. Department [recipient or his legal representative];
3. A completed MAP-109-HCBW;
4. A copy of the MAP-350 signed by the [a] recipient or his legal representative at the time of application or reapplication and each recertification thereafter;
5. The name of the case manager;
6. Documentation of each contact with, or on behalf of, an HCB recipient;
7. Documentation that each [an] HCB recipient receiving ADHC services was provided a copy of the ADHC center's posted hours of operation; and
8. Documentation of each service provided that shall include:
a. The date the service was provided;
b. The duration of the service;
c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the HCB recipient's home;
d. Itemization of each [An itemized documentation of] personal care or homemaking service delivered;
e. The HCB recipient's arrival and departure time[of the HCB recipient], excluding travel time, if the service was provided at the ADHC center;
f. Progress notes which shall include documentation of changes, responses and treatments utilized to evaluate the HCB recipient's needs; [and]
g. The signature of the service provider; and
(b) Fiscal reports, service records, and incident reports regarding services provided for a period of at least six 6) [five (5)] years from the date that a covered service is provided, except in the case of a minor[,] whose records shall be retained for three (3) years after the recipient reaches the age of majority under state law, whichever is longest.
(2) For each consumer, the support broker and department shall maintain a clinical record that includes:
(a) A copy of the completed MAP-351, the original of which shall be submitted to the department by the HCB waiver provider that performs the assessment or reassessment;
(b) A copy of the completed MAP-109-HCBW;
(c) A copy of the completed MAP-350;
(d) If the consumer selects a family member to provide CDO services, a written declaration of freedom of choice that is:
1. Completed for each family member providing CDO services;
2. Signed by the consumer; and
3. Attached to the MAP-350; and
(e) A financial record that includes:
1. A copy of the completed MAP-109-HCBW;
2. A copy of a completed MAP-074 for each CDO employee; and
3. Documentation of services provided by each CDO employee.
(3) Upon request, an HCB provider shall make information regarding service and financial records available to the:
(a) [The] Department;
(b) [The Commonwealth of Kentucky,] Cabinet for Health and Family Services, Office of Inspector General[,] or its designee;
(c) [The United States] Department for Health and Human Services[,] or its designee;
(d) [The United States] General Accounting Office[,] or its designee;
(e) [The Commonwealth of Kentucky,] Office of the Auditor of Public Accounts[,] or its designee; or
(f) [The Commonwealth of Kentucky,] Office of the Attorney General[,] or its designee.

Section 4. HCB Recipient Eligibility Determinations and Redeterminations. (1) An HCB waiver service shall be provided to a

Medicaid eligible HCB recipient who;

(a) Is determined by the department to meet NF level of care requirements; and

(b) [who] Would, without waiver services, be admitted by a physician's order to an NF.

(2) The department shall perform an NF level of care determination for each [regarding an] HCB recipient [shall be performed by the department] at least once every twelve (12) months[,] or more often if necessary.

(3) An HCB waiver service shall not be provided to an individual who:

(a) [Who] Does not require a service other than:

1. A minor home adaptation;

2. Case management; or

3. A minor home adaptation and case management;

(b) [Who] Is an inpatient of:

1. A hospital;

2. An NF; or

3. An intermediate care facility for an individual with mental retardation or a developmental disability [individuals with mental retardation or developmental disabilities (ICF/MR/DD)];

(c) [Who] Is a resident of a licensed personal care home; or

(d) [Who] Is receiving services from [a service in] another Medicaid home and community based services waiver program.

(4) An HCB waiver provider shall:

(a) Inform an HCB recipient or his legal representative of the choice to receive:

1. HCB waiver services; or

2. Institutional services; and

(b) Require an HCB recipient to sign a MAP-350 form at the time of application or reapplication and at each recertification [thereafter] to document that the individual [he] was informed of the choice to receive HCB waiver or institutional services [his choices].

(5) An eligible HCB recipient or the recipient's [his] legal representative shall select a participating HCB waiver provider from which the recipient [whom he] wishes to receive HCB waiver services.

(6) The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(7) An HCB waiver provider shall use a MAP-24 to notify the local DCBS office and the department of an HCB recipient's[on a MAP-24 form if an HCB recipient is]:

(a) Termination [Terminated] from the HCB waiver program; or

(b)1. Admission [Admitted] to an NF for less than sixty (60) consecutive days; and

2. Return [Returning] to the HCB waiver program from an NF within sixty (60) consecutive days.

Section 5. Covered Services. (1) An HCB waiver service [shall]:

(a) Shall Be prior authorized by the department to ensure that the service or modification of the service already meets [is adequate for] the needs of the HCB recipient;

(b) Shall be provided pursuant to a plan of care or, for a CDO service, be provided pursuant to a spending plan; [and]

(c) Shall, except for a CDO service, not be provided by a member of the HCB recipient's family. A CDO service may be provided by an HCB recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) Covered HCB services include

(a) A comprehensive assessment that shall:

1. [The following services provided to an HCB recipient by an HCB waiver provider who meets the requirements established in Section 2 of this administrative regulation shall be covered by the department:

(a) An assessment service which shall include:

1. A comprehensive assessment which shall:

a.] Identify an HCB recipient's needs and the services that the HCB recipient or the recipient's [his] family cannot manage or arrange for on the recipient's [his] behalf;

2. [b.] Evaluate an HCB recipient's physical health, mental health, social supports, and environment;

3. [c.] Be requested by an individual seeking [requesting] HCB waiver services or the individual's family, legal representative, physician, physician assistant, or ARNP;

4 [, a family or legal representative of the individual, the individual's physician, a physician assistant, or an ARNP;

d.] Be conducted by an assessment team[,] within seven (7) calendar days of receipt of the request for assessment;

5 [, by an assessment team comprised of an RN and a social worker or two (2) RN's; and

e.] Include at least one (1) face-to-face home visit by a member of the assessment team with the HCB recipient and, if appropriate, the recipient's family; and

6. Identify appropriateness and choice for CDO; [contact with an HCB recipient and, if appropriate, his family by the RN or social worker in the HCB recipient's home; and

2. Care planning resulting in the development of a plan of care that shall:

a. Reflect the needs of the HCB recipient;

b. List goals, interventions, and outcomes as related to clause a of this subparagraph;

c. Specify services needed;

d. Determine the amount, frequency, and duration of services;

e. Contain provisions for reassessment at least every twelve (12) months;

f. Be developed and signed by the assessment team, case manager, and HCB recipient or his family;

g. Be reviewed and signed by the attending physician, PA, or ARNP; and

h. Be submitted to the department within fourteen (14) calendar days of receiving the department's verbal approval of NF level of care;]

(b) A reassessment service which shall:

1. Determine the continuing need for HCB waiver services and, if appropriate, CDO services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures used in [as for] an assessment service;

4. Not be retroactive; and

5. Be initiated by an HCB waiver provider or support broker who shall:

a. Notify the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive; and

b. Not be reimbursed for a service provided during a period that an HCB recipient is not covered by a valid level of care certification; [and

6. Not be retroactive;]

(c) A case management service which shall:

1. Consist of coordinating the delivery of direct and indirect services to an HCB recipient;

2. Be provided by a case manager who shall:

a. Be an RN, [an] LPN, [or a] social worker, certified psychologist with autonomous functioning, licensed psychological practitioner, LFMT, or an LPCC;

b. Arrange for a service but not provide a service directly;

c. Contact the HCB recipient monthly by telephone or through a face-to-face visit [the HCB recipient] at the HCB recipient's residence or in the ADHC center, with a minimum of one (1) face-to-face visit [contact] between the case manager and the recipient every other month; and

d. Assure that service delivery is in accordance with an HCB recipient's plan of care; [and]

3. Not include a group conference; and

4. Include development of a plan of care that shall:

a. Be completed on the MAP-109-HCBW;

b. Reflect the needs of the HCB recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the assessment team, case manager, and HCB recipient or his family;

h. Be reviewed and signed by the attending physician, PA, or ARNP; and

k. Be submitted to the department no later than twenty-one (21) calendar days after receiving the department's verbal approval of NF level of care;

(d) A homemaker service which shall consist of general household activities and shall be provided:

1. By staff pursuant to Section 2(3)(j) and (k) of this administrative regulation; and

2. To an HCB recipient:

a. Who is functionally unable, but [and] would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities;

(e) A personal care service which shall consist of age-appropriate medically-oriented services and [which shall] be provided:

1. By staff pursuant to Section 2(3)(j) and (k) of this administrative regulation; and

2. To an HCB recipient:

a. Who does not need [Whose needs are not of a] highly skilled or technical care [nature];

b. For whom services are essential to the recipient's [his] health and welfare and not for the recipient's[, rather than his] family, and

c. Who needs assistance with age-appropriate activities of daily living;

(f) An attendant care service which shall consist of hands-on care that is [which shall]:

1. [Be] provided by staff pursuant to Section 2(3)(j) and (k) of this administrative regulation to an HCB recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours; [family or other support providing care but who are employed outside the home and are unable to provide care during their working hours. The family or friend providing care shall not be required to live in the same residence as the individual for whom he is providing care; however, he shall provide care or supervision in the HCB recipient's home during the hours the attendant care provider is not available, and]

c. Prior to being eligible for the HCB Waiver Program[,] in accordance with Section 4 of this administrative regulation, was able to care for him or herself;

2. Not [be] of a general housekeeping nature; and

3. Not [be] provided to an HCB recipient who is receiving any of the following HCB waiver services:

a. Personal care;

b. Homemaker; or

c. ADHC;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and [those persons normally providing the care and shall] be:

1. Provided by staff pursuant to Section 2(3)(j) and (k) of this administrative regulation who provide [provides] services at a level that appropriately and safely meets the medical needs of the HCB recipient in the following settings:

a. An HCB recipient's place of residence; or

b. An ADHC center; and

2. Provided to an HCB recipient who has care needs beyond normal child care; and

3. Used no less than every (6) months [baby sitting];

(h) A minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of an HCB recipient and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the HCB recipient's disability and needs;

3. Exclude an adaptation or improvement to a home that:

a. Has no direct medical or remedial benefit to the HCB recipient; or

b. Adds to the total square footage of a home; and

4. Be submitted on form MAP-95 for prior authorization; or

(i) An ADHC service which shall:

1. Except for an HCB recipient approved for an ADHC service prior to May 1, 2003, be provided to an HCB recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including [which may include] ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN [or other qualified staff];

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of an HCB recipient, including:

(i) [and shall include] Monitoring of vital signs;

(ii)[,] Assistance with activities of daily living; and

(iii)[,] Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an HCB recipient;

3. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, PA, or ARNP in an HCB recipient's ADHC plan of treatment. Ancillary services shall [which]:

a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the HCB recipient or ADHC center staff;

b. Be [Are] reasonable and necessary for the HCB recipient's condition;

c. Be [Are] rehabilitative in nature;

d. Include physical therapy provided by a physical therapist or physical therapist assistant, occupational therapy provided by an occupational therapist or occupational therapist assistant, or speech therapy provided by a speech-language pathologist; and

e. Comply with the physical [therapy], occupational [therapy], and speech therapy requirements established in ["]Technical Criteria for Reviewing Ancillary Services for Adults[,] February 2000 Edition" and "Technical Criteria for Reviewing Ancillary Services for Pediatrics, April 2000 Edition"];

4. Include respite services pursuant to paragraph (g) of this subsection;

5. Be provided to an HCB recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

c. An ARNP;

d. An RN;

e. An LPN;

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational therapist assistant;

k. [i.] A speech pathologist,

l. [j.] A social worker;

m. [k.] A nutritionist; [or]

n. [l.] A health aide; [and]

o. An LPCC;

p. An LFMT;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment developed and signed by the physician, PA, or ARNP in consultation with the ADHC RN and recipient or his legal representative. The plan of treatment shall [appropriate ADHC center staff which]:

a. Include [includes] pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; [and]

b. [Shall] Be reviewed and revised, if needed, and a copy sent to the department every ninety (90) days; and

c. Include the signatures of the ADHC RN and the recipient or

his legal representative.

(3) Modification of an ancillary therapy service or an ADHC unit of service shall require prior authorization as follows:

(a) Prior authorization shall:

1. Be requested by an RN or designated ADHC center staff; and

2. [shall] Require submission of the modification section [items 4 through 5 of page 10] of a MAP-351[A] form and a MAP-109-HCBW form to the department;

(b) An RN or designated ADHC center staff shall forward a copy of the documents required in paragraph (a) of this subsection to the HCB case manager or the consumer's support broker for inclusion in the HCB recipient's case records within ten (10) working days of the prior authorization request; and

(c) Upon approval or denial of a prior authorization request, the department shall provide written notification to [notify, in writing,] the HCB agency, the ADHC center, and the HCB recipient.

(4) Covered CDO services shall include the following:

(a) A home and community support service that shall be provided:

1. By an individual who meets the requirements in Section 2(3) of this administrative regulation;

2. To an HCB recipient who is not currently receiving case management, homemaking, personal care, attendant care, or respite services; and

(b) A service provided by a support broker that shall:

1. Provide assistance to a consumer with all aspects of the CDO service and may include:

a. Completing or revising a MAP-109-HCBW by using the Person Centered Planning: Guiding Principles during the development of the plan of care;

b. Recruiting, hiring, and managing individuals who provide a home and community support service;

c. Completing and submitting the following forms:

(i) MAP-070, Consumer Directed Options Program Representative Designation Form;

(ii) MAP-071, Consumer Rights and Responsibilities Under the Consumer Directed Options Program;

(iii) MAP-073, Termination of Consumer Directed Option (CDO); and

(iv) MAP-074, Consumer Directed Option Provider Agreement; or

d. Coordinating all services for consumers;

2. Be available twenty-four (24) hours per day, seven (7) days per week; and

3. Ensure all applicable federal and state laws and requirements are met.

(5) A consumer who is unable to self direct may designate a CDO representative who shall:

(a) Be twenty-one (21) years of age or older; and

(b) Sign a completed MAP-070.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-073.

(7) If imminent danger to a consumer's health, safety, or welfare exists, the department shall terminate the consumer's participation in the CDO program immediately without notice by completing a MAP-073. Upon termination, the department shall notify the consumer in writing.

(8) The department may terminate a consumer's participation in the CDO program upon determination that the consumer or CDO employee has not adhered to the provisions of the completed MAP-109-HCBW. Prior to the consumer's termination from CDO services, the department shall:

(a) Notify the HCBW assessment or reassessment service provider and consumer of the department's intent to terminate the consumer's participation;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow ninety (90) days for the consumer to:

1. Resolve the issue, develop and implement a prevention plan; or

2. Designate a CDO representative; and

(d) Send a MAP-073 to the consumer ninety (90) days after the department's notice of its intent to terminate the consumer's participation in the CDO program if the consumer fails to meet the requirements of paragraph (c) of this subsection.

(9) Upon termination from CDO services, a consumer shall transition to HCBW services.

Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature, and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 7. [6.] Appeal Rights. An appeal of a department determination regarding NF level of care or services to an HCB recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section 8. [7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department for Medicaid Services Adult Day Health Care Services Manual", May 2005 edition;

(b) "Department for Medicaid Services Home and Community Based Waiver Services Manual", September 2006 edition;

(c) "Person Centered Planning: Guiding Principles", March 2005 edition;

(d) "Technical Criteria for Reviewing Ancillary Services for Adults", November 2003 edition;

(e) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services", February 2001 edition;

(f) "MAP-070, Consumer Directed Options Program Representative Designation Form", March 2005 edition;

(g) "MAP-071, Consumer Rights and Responsibilities Under the Consumer Directed Options Program", August 2006 edition;

(h) "MAP-073, Termination of Consumer Directed Option (CDO)", March 2005;

(i) "MAP-074, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services, Consumer Directed Option Provider Agreement", March 2005 Edition;

(j) "MAP-95 Request for Equipment Form" Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services, September 2002 edition;

(k) "MAP-109-HCBW, Plan of Care/Prior Authorization for HCB Waiver Services", September 2006 edition;

(l) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(m) " MAP-351, The Department for Medicaid Services, HCB Waiver Client Assessment", September 2006 edition. [~~"MAP-351A, The Department for Medicaid Services, HCB Waiver Client Assessment", "June 2002 Edition",~~

~~(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Families and Children, Department for Community Based Services", "January 2000 Edition";~~

~~(c) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", "January 2000 Edition";~~

~~(d) "MAP-95 Request for Equipment Form" Commonwealth of Kentucky, Cabinet for Human Resources, Department for Medicaid Services, "April 1988 Edition";~~

~~(e) "Technical Criteria for Reviewing Ancillary Services for Adults", "February 2000 Edition"; and~~

~~(f) "Technical Criteria for Reviewing Ancillary Services for Pediatrics", "April 2000 Edition";~~

~~(g) "MAP-109-HCBW, Plan of Care/Prior Authorization for HCB Waiver Services, March 2003 Edition";~~

~~(h) "Department for Medicaid Services Adult Day Health Care Services Manual, March 2003 Edition"; and~~

~~(i) "Department for Medicaid Services Home and Community Based Waiver Services Manual, March 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: September 28, 2006
FILED WITH LRC: October 3, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for the home and community based waiver 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 provisions for the home and community based waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for the home and community based waiver services.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer-directed option services program that allows Medicaid home and community based waiver participants to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the consumer-directed option services program established by KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the consumer-directed option services 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 a consumer-directed option services program for home and community based waiver recipients in accordance with KRS 205.5605 and 5606.

(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 Medicaid's home and community based waiver recipients who opt to participate in the consumer-directed services program. Currently, there are approximately 13,000 members enrolled in the home and community based waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid home and community based waiver recipients may opt to participate in the consumer directed option services program. An individual who chooses to participate will be assisted by a support broker. Individual who wish to provide consumer directed services must meet basic requirements including: complete and submit a consumer directed option provider agreement to the consumer's support broker; complete a self-directed and consumer-directed service training curriculum; complete cardiopulmonary resuscitation and first aid training, be a U.S. citizen; sign a confidentiality agreement; report any suspected abuse, neglect, or exploitation; declare in writing that they are free of infectious or contagious disease; demonstrate ability to safely attend to consumer; provide record-keeping services for the consumer; and be able to communicate effectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A home and community based waiver recipient who enrolls in the consumer directed option program will be able to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and nonmedical home and community based services and supports.

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

(a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer; however, the department is absorbing an administrative cost (support brokers and fiscal intermediaries). Additionally, utilization is unpredictable; therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer; however, the department is absorbing an administrative cost (support brokers and fiscal intermediaries). Additionally, utilization is unpredictable; therefore, the DMS is unable to determine a precise 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 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: Neither 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: 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 Constitu-

tion.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid home and community based waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
921 KAR 2:006E

This emergency administrative regulation, 921 KAR 2:006E, Technical Requirements for the Kentucky Transitional Assistance Program (K-TAP), is necessary to meet the federal legislative and regulatory mandates, including timeframes, established in the provisions of the Deficit Reduction Act of 2005 (Pub. L. 109-171) and related interim federal regulations, issued June 29, 2006, pertaining to the reauthorization of the Temporary Assistance for Needy Families Block Grant (TANF) under Title IV-A of the Social Security Act. The Deficit Reduction Act of 2005 and interim federal regulations reauthorizing TANF clarified participation requirements for families receiving public assistance or K-TAP benefits, including the application of participation requirements. Under the new rule, disqualified parents who are ineligible for TANF assistance (i.e., fleeing felons, drug-related felons, and persons ineligible because of past fraud) must now participate in the Kentucky Works Program and will be included in the work participation rate. Without the immediate effective date of this emergency administrative regulation, the Cabinet for Health and Family Services would fail to comply with these federal laws by their effective date, October 1, 2006, and would risk associated federal financial penalties. This emergency administrative regulation will ensure Kentucky's compliance with these federal legislative and regulatory provisions, prevent a loss of federal and state funds, and maintain this financial safety net, K-TAP, for eligible Kentucky citizenry's access. An ordinary administrative regulation would not allow the agency sufficient time to implement policy and program changes by October 1, 2006, to comply with the provisions of the Deficit Reduction act of 2005 (Pub. L. 109-171) and the related interim federal regulations pertaining to the reauthorization of the TANF block grant, and to avoid associated federal financial penalties. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 45 C.F.R. Parts 260-265, 8 U.S.C. 1611-1645, 42 U.S.C. 601-619
STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619, Pub. L. 109-171 [~~EO 2004-726~~]

EFFECTIVE: September 29, 2006

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services.~~] KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(3) "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(4) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(5) "Constant care" means active care for a family [household] member living in the home by a work-eligible [an] individual other than the time:

(a) The family [time the household] member [or individual] spends sleeping; or

(b) [Time] In which the family [household] member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (2) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Family member" means an individual related by blood, marriage, or adoption.

(9) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent.

(10) [(9)] "Kentucky Works" means a program that assists [a: (a) Recipient of K-TAP] in obtaining education, training, experience and employment necessary to leave public assistance[; or (b) Former K-TAP recipient with job retention service].

(11) [(10)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(12) [(11)] "Prior labor market attachment" or "PLMA" means the parent has earned not less than $1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(13) [(12)] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524 et seq.;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit, and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

3. The spouse or unremarried surviving spouse if the marriage fulfils the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph; or

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S C. 7105 and is under eighteen (18) years of age; or

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U S C. 1101.

(14) [(13)] "Qualifying parent" means the parent who meets PLMA.

(15) [(14)] "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(16) [(15)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(17) [(16)] "Severe form of trafficking" is defined by 22 U S.C. 7102.

(18) [(17)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(19) [(18)] "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 U.S C. 1382e; or

(c) 42 U.S C. 1382.

(20) [(19)] "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(21) [(20)] "Work" means participation in a Kentucky Works activity [component] pursuant to 921 KAR 2.370, Section 2(1)(c) [(2)(c)].

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(3) of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance, Form PA-33D, "Child's Certification of School Enrollment/Attendance", shall be required for a:

(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) Minor teenage parent pursuant to Section 19 (1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to 921 KAR 2:016, Section 1.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.

(b) A qualified alien, pursuant to Section 1(12) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(12) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.

(d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration, Form PA-14, "Declaration of Citizenship or Alien Status", shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(8) of this administrative regulation.

(2) A specific deprivation factor, under Sections 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;

2. Legal separation;

3. Marriage annulment;

4. Desertion of.

a. Thirty (30) days or more if the parent:

(i) Voluntarily leaves; or

(ii) Refuses to accept the child into his home; or

b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the

parent's condition is the cause of and results in the parent's inability to support or care for the child

(3) Incapacity shall exist in a case if the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:

1. Was present at the time of application; and

2. Has continued or is expected to last for a period of at least thirty (30) calendar days;

(b) The thirty (30) day period may include a period the claimant is undergoing:

1. Planned diagnostic study; or

2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI;

b. Is age sixty-five (65) or over;

c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;

d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:

(i) Social Security Administration; or

(ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of application date;

i. Is recovering from surgery, illness or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness or impairment exists; and

2. The disability, illness or impairment is:

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:

(a) Available printed materials that provide information regarding available employment opportunity shall be researched;

(b) The local Office of Employment and Training office shall be contacted regarding accessible employment opportunity within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this section.

(9) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(11) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 1(11) of this administrative regulation by signing a completed Form PA-1C Supplement D, "Qualifying Parent Eligibility" with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for $500 of the $1000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written state-

ment from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care.

(b) If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall.

1. Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care if no other eligible child is in the benefit group.

(4) (a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 11 of 921 KAR 2:016.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;

6. Passport;

7. Military record;

8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 16. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2:370.

Section 17. Cooperation in Child Support Activities. (1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to

subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

(a) Identifying the noncustodial parent or obligor;

(b) Providing information to assist in the:

1. Location of the noncustodial parent or obligor;

2. Enforcement of a child support order; or

3. Review or modification of a child support order;

(c) Establishing paternity, if required;

(d) Establishing, modifying or enforcing a child support order; and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3)(a) The cabinet shall provide written notice, Form CS-333, "Facts About the Child Support Program for K-TAP and Kinship Care Recipients", to the applicant or recipient, regarding the individuals' right to file a good cause claim for refusing to cooperate in a child support activity.

(b) The cabinet shall provide Form CS-333.1, "Facts About the Right to Claim Good Cause", to an applicant or recipient who:

1. Requests additional information regarding the criteria for filing a claim; or

2. Files a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

1. Child; or

2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release him for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, "Good Cause Claim/Determination", is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and

2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

1. Obtain permission for the contact; or

2. Enable the applicant or recipient to:

a. Present additional evidence or information so that the contact shall be unnecessary;

b. Withdraw the application for assistance or request discontinuance of K-TAP; or

c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

(a) Document the case;

(b) Determine that good cause:

1. Exists and a support activity cannot be initiated without endangering the:

a. Best interests of the child; or

b. Physical or emotional health of the child or the relative; or

2. Does not exist;

(c) Advise the applicant or recipient in writing, Part II of Form PA-121, "Good Cause Claim/Determination", of the result of the good cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016; and

(b) The cabinet shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 18. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of

benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 19. Minor Teenage Parents. (1) A minor teenage parent under the age of eighteen (18) living with the spouse shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 11 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian or appropriate adult relative pursuant to Section 11 of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11. of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 20. Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619 shall not be provided for more than sixty (60) cumulative months to a benefit group, as defined by Section 1(2) of 921 KAR 2.016, that includes:

(a) An adult;

(b) A minor teenage parent pursuant to Section 19 (8) of this administrative regulation; or

(c) A fugitive or drug felon not eligible pursuant to Section 22 or 23 of this administrative regulation.

(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 24 (1)(b) of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who has a physical or mental disability, as defined in Section 9(3)(a)2, (b) and (c) of this administrative regulation, as determined by the cabinet. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2.370, Sections 2(1)(c)12 [~~(2)(c)13~~] and 4(2); and

2. Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), a parent providing constant care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). [~~1. Is required to provide constant care for at least six (6) hours daily for a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available.~~

~~2.~~] During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, as determined by the cabinet, who:

1. Has complied with.

a. Kentucky Works requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

2. During the extension period, shall:

a. Comply with:

(i) Kentucky Works requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(4) [~~(3)~~]; and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence exemption pursuant to Section 24 (2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

b. Kentucky Works requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member

who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2.046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.

(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2.016, that includes an adult, or minor teenage parent pursuant to Section 19(8) of this administrative regulation, who has:

1. Received six (6) cumulative months of K-TAP assistance; and

2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2.016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual pursuant to 921 KAR 2:016, Section 1(21); or

(b) Penalized individual pursuant to 921 KAR 2:016, Section 1(19).

Section 21. Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 22. Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 23. Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 24. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and concerns identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often that every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 20 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-1C Supplement D, Qualifying Parent Eligibility", edition 10/06 [~~6/05~~];

(b) "PA-14, Declaration of Citizenship or Alien Status", edition 10/06 [~~6/05~~];

(c) "PA-33D, Child's Certification of School Enrollment/Attendance", edition 10/06 [~~6/05~~];

(d) "PA-121, Good Cause Claim/Determination", edition 10/06 [~~6/05~~];

(e) "PA-202TP, Teen Parent Personal Responsibility Plan", edition 10/06 [~~6/05~~];

(f) "CS-333, Facts About the Child Support Program for K-TAP and Kinship Care Recipients", edition 6/05[~~"~~]; and

(g) "[~~CS-331~~]CS-333.1, Facts About the Right to Claim Good Cause", edition 6/05[~~"~~].

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 28, 2006
FILED WITH LRC: September 29, 2006 at 3 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding technical eligibility for K-TAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements for technical eligibility for K-TAP, the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619. This administration regulation sets forth these standards in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes K-TAP technical eligibility requirements. The administrative regulation establishes the technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation in child support activities, minor teenage parent provisions, and time limitations for eligibility for K-TAP 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 amendment to this administrative regulation requires disqualified parents, who are ineligible for TANF assistance (i.e., fleeing felons, drug-related felons, and persons ineligible because of past fraud), to participate in the Kentucky Works Program as regulated in 921 KAR 2:370, Technical Requirements for Kentucky Works. This amendment also clarifies exceptions to the 60-month lifetime limit on the receipt of TANF benefits and makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the changes in the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171) and related interim federal regulations, released June 29, 2006, which reauthorized the TANF block grant under Title IV-A of the Social Security Act. The amendment is necessary to avoid state penalties associated with non-compliance with these new federal requirements

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619 by clarifying technical eligibility requirements for K-TAP recipients, the reasons in which a case may receive an extension of benefits beyond the 60-month lifetime limit of receipt, and making technical corrections to comply with KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes K-TAP technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age cooperation in child support activities, and time limitation for eligibility for K-TAP benefits. The amendment to this administrative regulation clarifies policy for those who may be eligible for K-TAP assistance.

(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 families who are receiving assistance from K-TAP. As of June 2006, there were 27,809 families receiving K-TAP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parents, who are ineligible to receive K-TAP assistance (i.e., fleeing felons, drug-related felons, and persons ineligible because of past fraud), will now be required to participate in the Kentucky Works Program and included in the work participation rate. In order for a case to receive an extension of benefits beyond the 60-month lifetime limit, the work-eligible individual will be required to meet one of the reasons for extension as specified in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By amending this administrative regulation, the state will avoid financial penalties. Additionally, ineligible parent recipients will now receive the same supportive services as parent recipients in their efforts to become self-sufficient prior to reaching the 60-month lifetime limit of receipt.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no accrued benefits to the entities as a result of compliance.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A and state general funds used to meet Maintenance of Effort requirements are the funding source for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619, Pub. L. 109-171.

2. State compliance standards. KRS 194A.050(1), 205.200(2), (3), and 205.2003(1).

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 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 impose stricter, additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601 to 619, and Pub. L. 109-171.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 2006 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational since October 2006. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational October 2006. This amendment will not require any additional costs in subsequent years.

Note: 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
921 KAR 2:370E

This emergency administrative regulation, 921 KAR 2:370E, Technical Requirements for the Kentucky Works Program (KWP), is necessary to meet the federal legislative and regulatory mandates, including timeframes, established in the provisions of the Deficit Reduction Act of 2005 (Pub. L. 109-171) and related interim federal regulations, issued June 29, 2006, pertaining to the reauthorization of the Temporary Assistance for Needy Families Block Grant (TANF) under Title IV-A of the Social Security Act. The Deficit Reduction Act of 2005 and interim federal regulations reauthorizing TANF clarified participation requirements for families receiving public assistance or Kentucky Transitional Assistance Program (K-TAP) benefits, including the application of the participation requirements, activities qualifying as participation, and documentation necessary to verify participation. Without the immediate effective date of this emergency administrative regulation, the Cabinet for Health and Family Services would fail to comply with these federal laws by their effective date, October 1, 2006, and would risk associated federal financial penalties. This emergency administrative regulation will ensure Kentucky's compliance with these federal legislative and regulatory provisions, prevent a loss of federal and state funds, and maintain this financial safety net, K-TAP, for eligible Kentucky citizenry's access. An ordinary administrative regulation would not allow the agency sufficient time to implement policy and program changes by October 1, 2006, to comply with the provisions of the Deficit Reduction Act of 2005 (Pub. L. 109-171) and the related interim federal regulations pertaining to the reauthorization of the TANF block grant, and to avoid associated federal financial penalties. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:370E. Technical requirements for Kentucky Works.

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651 to 678, 42 U.S.C. 601-619, 12101 to 12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-171

EFFECTIVE: September 29, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means eligible child care pursuant to 45 C.F.R. Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(5) "Community service" is defined in 45 C.F.R. 261.2(h).

6. "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(7) [(6)] "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) [(7)] "Constant care" means active care for a family [household] member living in the home by a work-eligible [an] individual other than the time:

(a) The family [household] member spends sleeping; or

(b) In which the family household member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.

(9) "Disability" is defined by 42 U.S.C. 12102(2)(A). Major activities of living may include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

(10) [(8)] "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(11) "Family member" means an individual related by blood, marriage, or adoption.

(12) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in

1. An adult basic education program;

2. A general educational development (GED) program; or
3. A literacy program;
(b) A semester system in a college or university of:
1. Twelve (12) semester hours or more; or
2. Six (6) semester hours or more during the summer term;
(c) The equivalent in a college or university if other than a semester system is used; or
(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time
(13) "Job search and job readiness assistance" is defined in 45 C.F.R. 261.2(g)
(14) "Job skills training directly related to employment" is defined in 45 C.F.R. 261.2(i)
(15) [(9)] "Kentucky Transitional Assistance Program" or "(K-TAP)" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.
(16) [(10)] "Kentucky Works" means a program that assists[: (a)] a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance[; or
(b) A former K-TAP recipient with a job retention service].
(17) "On-the-job training" is defined in 45 C.F.R. 261.2(f).
(18) [(11)] "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined in 921 KAR 2:016, Section 1(10)(b) or (c).
(19) [(12)] "Reasonable distance" means the distance customarily available within a locality.
(20) "Subsidized employment" is defined in 45 C.F.R. 261.2(c) and (d).
(21) "Unsubsidized employment" is defined in 45 C.F.R. 261.2(b).
(22) [(13)] "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.
(23) [(14)] "Vocational education" is defined in 45 C.F.R. 261.2(l) [means a training program that prepares the individual for employment]
(24) [(15)] "Wage supplementation" means a component in which an employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.
(25) "Work-eligible individual" is defined in 45 C.F.R. 261.2(n).
(26) [(16)] "Work Experience Program" or "WEP" is defined in 45 C.F.R. 261.2(e) [means a component which provides in-state work experience to assist a participant in obtaining regular public or private employment].

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual [An adult and teenage parent Kentucky Transitional Assistance Program recipient shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation.
(2) An adult Kentucky Transitional Assistance Program recipient who does not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program] as follows:
(a)1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.
2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education.
(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to have at least a minimum of.
1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents with the number of hours required of each parent as follows:
a. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education; and
b. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an activity pursuant to paragraph (c)1 through 4 and 6 of this subsection.
2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education.
3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.
4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.
(c) In accordance with 45 C.F.R. 261.2, [An activity] to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include:
1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service;
7. Full-time enrollment progressing satisfactorily, as defined by the educational institution or program [school], in [postsecondary or] vocational education not to exceed twenty-four (24) cumulative months during which the participant will not be required to participate in other activities;
8. Full or part-time enrollment, progressing satisfactorily, as defined by the educational institution or program [school], in [postsecondary or] vocational education at any time when combined with an activity pursuant to paragraph (c)1 through 4 and 6 of this subsection;
9. [Satisfactory] Attendance at secondary school or equivalent if the recipient:
a. [in the case of a recipient who] Has not completed secondary school or equivalent;
b. Couples the attendance [coupled] with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
c. Makes satisfactory progress as defined by the educational institution or program in accordance with 45 C.F.R. 261.2(l);
10. Provision of child care services to an individual participating in community service;
11. Job skills training directly related to employment;
12. Based on the findings of the assessment, an allowable [placement in a work] preparation activity that includes:
a. Domestic violence counseling;
b. Life skills training;
c. A substance abuse program;
d. Mental health counseling;
e. Vocational rehabilitation;
f. Literacy; or
g. Adult education; and
13. [12.] Wage supplementation, which:
a. May be available in limited areas and may expand into additional areas; and
(b) Shall not commence until the participant has signed form "KW-230, Wage Supplementation Program Participant Agreement"[;
13. Participation in a work program approved by the cabinet in accordance with this paragraph, and
14. Participation in an activity approved by the cabinet in accordance with this paragraph].
(2) Excused absences shall:
(a) Include:

1. Scheduled hours missed due to holidays; and

2. A maximum of ten (10) additional days of excused absences in any twelve (12) month period with no more than two (2) days occurring in a month; and

(b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following verification:

(a) "PA-33, Verification of Transportation and Participation in Education or Training Activity"; or

(b) "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity".

Section 3. Exceptions to Program Participation. (1) A Work-eligible individual shall be deemed to be engaged in work for a month in a fiscal year if the individual:

(a) Is a head of household;

(b) Has not obtained a high school diploma or a GED;

(c) Has not attained twenty (20) years of age; and

(d)1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress. [~~A Kentucky Transitional Assistance Program recipient who is a head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for a month in a fiscal year if the recipient.~~

~~(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or~~

~~(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.~~]

(2)(a) A work-eligible individual [~~An adult Kentucky Transitional Assistance Program recipient~~] shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual [~~adult~~] is:

1. A single custodial parent; and

2. Caring for a child who has not attained twelve (12) months of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or

2. Cumulative.

(3)(a) For a work-eligible individual whose [~~Kentucky Transitional Assistance Program recipient where~~] compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP [~~Kentucky Transitional Assistance Program~~] applicant or work-eligible individual [~~recipient~~] is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2 006, Section 23(1).

(4) A work-eligible individual [~~Kentucky Transitional Assistance Program recipient~~] shall be deemed to be engaged in work for a month if the individual [~~recipient~~] is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) In accordance with 45 C.F.R 291.2(n)(2)(i), the cabinet shall exclude from program participation an individual providing constant care for more than eight (8) consecutive weeks to a disabled family member as verified by the completion of the "PA-4, Statement of Required Caretaker Services".

(6) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee [~~another entity designated by the cabinet~~] shall make an assessment of the work-eligible individual's employability on "KW-200, Kentucky Works Assessment Form".

(b) The cabinet shall request other agencies to assist in the assessment process as needed.

(c) The assessment shall include:

1. Consideration of basic skills;

2. Occupational skills; and

3. Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual [~~participant~~] shall jointly develop a self-sufficiency plan by completing the "KW-202, K-TAP Transitional Assistance Agreement". This plan shall contain:

(a) An employment goal for the individual [~~participant~~];

(b) A service to be provided by the cabinet including child care;

(c) An activity to be undertaken by the individual [~~recipient~~] to achieve the employment goal; and

(d) Other needs of the family.

(3) Work-eligible individuals [~~Recipients~~] shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:

(a) "KW-105, Kentucky Works Referral Form (Participant)";

(b) "PA-218A, New Chance Referral"; or

(c) "KW-246, WEP Referral Form".

(4) An adult applicant or recipient of the K-TAP benefit group shall register for work using form "PA-511, Workforce Kentucky Customer Registration" except for a member who is:

(a) Under age eighteen (18);

(b) Age sixty (60) or over;

(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to Section 1(13) of 921 KAR 2:016;

(d) Receiving benefits based on 100 percent disability;

(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or

(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a work-eligible individual or a Kentucky Works participant;

(b) At the request of a service provider; or

(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee [~~contractor~~].

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

(4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form "KW-204, Conciliation Contact ".

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(5) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation on form "KW-205, Conciliation Results".

Section 6. Excused from Penalties. (1) A work-eligible individual [~~recipient~~] shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;

2. Cannot locate child care at a reasonable distance from home;

3. Determines the unsuitability of informal child care; or

4. Cannot locate affordable child care arrangements;

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the individual [~~applicant or recipient~~];

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet;

(f) The individual [~~A recipient~~] is required to provide constant care, not to exceed eight (8) consecutive weeks, [~~for at least six (6) hours daily~~] for a family [~~household~~] member [~~who is a parent, spouse, or child~~] with a disability as documented by medical evidence using the PA-4 [~~or by a reliable information source, as verified by the cabinet, and no alternative care arrangement is available~~];

(g) The individual [~~participant~~] is temporarily incarcerated or institutionalized for thirty (30) days or less;

(h) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;

(i) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(j) Wage rate is decreased subsequent to acceptance of employment;

(k) The individual [~~participant~~] accepts a better job that, because of a circumstance beyond the control of the individual [~~recipient~~], does not materialize; or

(l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the [~~an~~] individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual [~~Kentucky Transitional Assistance Program recipient~~] fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual [~~recipient~~]:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Fails to register for work unless an exception in Section 4(4) of this administrative regulation applies.

(2)(a) Except for a requirement listed in paragraph (b) of this subsection, a work-eligible individual [~~K-TAP recipient~~] who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(4) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis.

(b) Assistance to the benefit group shall be discontinued if the work-eligible individual [~~K-TAP recipient~~], fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or
2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

3. The penalties in paragraph (a) or (b) of this subsection shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

(4) The penalties in paragraph (a) or (b) of this subsection shall continue to be applied until the work-eligible individual [~~participant~~] complies with a program requirement.

(5) If a penalized K-TAP recipient indicates he or she will comply with program requirements, but remains noncompliant, the recipient shall be notified of the continued penalty status in writing on form "KW-211, Noncompliance Contact".

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2.055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(4) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

(a) Race;
(b) Color;
(c) Religion;
(d) Sex;
(e) National origin;
(f) Age;
(g) Disability; or
(h) Political belief or affiliation.

(6) Prior to placement in a WEP activity, a WEP participant shall sign form "KWET-240, Work Experience Training Program Participant Agreement".

(7) A training site agency shall:

(a) Complete a Department for Community Based Services questionnaire relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213 [~~et seq.~~];

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant on Form PA-33, to ensure the WEP participant's compliance with subsection (8) of this section [~~which shall be submitted by a WEP participant~~];

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services,

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to the "KWET-241, WEP Training Site Agreement", except as au-

thorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New task after mastery of a skill; and

3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678 [et seq.,] is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (8) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(8) The WEP participant shall submit form PA-33 completed monthly by the WEP provider pursuant to subsection (7)(e) and (f) of this section.

(9) [(7)] Changes to the KWET-241 shall be established in writing on form "KW-244, WEP Training Site Agreement Amendment".

(10) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form "KW-245, Notice of WEP Discontinuance".

(11) [(8)] A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

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

(a) "KW-105, Kentucky Works Referral Form (Participant)", edition 10/06 [1/06];

(b) "KW-200, Kentucky Works Assessment Form", edition 1/06;

(c) "KW-202, K-TAP Transitional Assistance Agreement", edition 10/06 [1/06];

(d) "KW-204, Conciliation Contact", edition 10/06 [1/06];

(e) "KW-205, Conciliation Results", edition 10/06 [1/06];

(f) "KW-211, Noncompliance Contact", edition 10/06 [1/06];

(g) "KW-230, Wage Supplementation Program Participant Agreement", edition 10/06 [1/06];

(h) "KW-244, WEP Training Site Agreement Amendment", edition 1/06;

(i) "KW-245, Notice of WEP Discontinuance", edition 10/06;

(j) "KW-246, WEP Referral Form", edition 10/06 [1/06];

(k) [(j)] "KWET-240, Work Experience Training Program Participant Agreement", edition 1/06;

(l) [(k)] "KWET-241, WEP Training Site Agreement", edition 10/06 [1/06];

(m) "PA-4, Statement of Required Caretaker Services", edition 10/06;

(n) [(l)] "PA-33, Verification of Transportation and Participation in Education Training Activity", edition 10/06 [1/06];

(o) [(m)] "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity", edition 10/06 [1/06];

(p) [(n)] "PA-218A, New Chance Referral", edition 10/06 [1/06]; and

(q) [(o)] "PA-511, Workforce Kentucky Customer Registration", edition 1/06.

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 28, 2006
FILED WITH LRC: September 29, 2006 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation establishes the technical requirements of activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation conforms to the content of the authorizing statutes by establishing the technical requirements and allowed activities of the KWP. The KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Title IV-A of the Social Security Act (a.k.a., the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619). This administration regulation sets forth these standards in conformity with the Title IV-A or TANF State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation, and penalties for failure to participate without good cause.

(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 comply with the Deficit Reduction Act of 2005 (Pub. L. 109-171), which reauthorized TANF, and related interim federal regulations released June 29, 2006. The amendment clarifies the families who are required to participate in an activity, adds new definitions for the countable activities, enhances verification and monitoring of the required activities to bring Kentucky's TANF program into compliance with federal funding requirements, and makes technical corrections to conform with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the programmatic changes contained within the new federal regulations implementing TANF's Reauthorization.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619, Pub. L. 109-171, and the interim federal regulations implementing TANF's Reauthorization by clarifying technical eligibility requirements of KWP.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program. The amendment assists in the effective administration of the statutes through its incorporation of federal requirements necessitated by TANF's Reauthorization.

(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 families

who are receiving assistance from K-TAP and are required to participate in KWP. As of June 2006, there were 27,809 families receiving K-TAP. Of these, 12,238 individuals are required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certain parents, who receive benefits on behalf of their children, such as convicted drug felons, fugitive felons, or parents found fraudulent within K-TAP, will now be required to participate in KWP per federal regulations. Individuals required to participate in KWP must ensure their activities and time spent in those activities fall within the federal requirements to maintain K-TAP benefit levels. Verification and documentation of all hours of participation have been enhanced and will be facilitated by service providers and community partners.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By amending this administrative regulation, the state will avoid financial penalties, and KWP participants will maintain benefit levels. Ultimately, KWP participants should achieve the overall goal of self-sufficiency.

As a result of compliance, what benefits will accrue to the entities identified in question (3):

(c) By amending this administrative regulation, the state will avoid financial penalties, and KWP participants will maintain benefit levels. Ultimately, KWP participants should achieve the overall goal of self-sufficiency.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A and state general funds used to meet Maintenance of Effort requirements are the sources of funding for this administrative regulation.

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

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

(9) TIERING. Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619.

2. State compliance standards. KRS 194A.050(a), 205.200(2), 205 200(7), and 205 2003.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 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 impose stricter, additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Family Support, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205 200(2), 205 200(7), 205.2003, 42 U.S.C. 601 to 619, and Pub. L. 109-171.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational since October 1996. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since October 1996. This amendment will not require any additional costs in subsequent years.

Note: 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
922 KAR 1:400E

This emergency administrative regulation, 922 KAR 1:400E, Supportive Services, is necessary to comply with provisions of 2006 Ky. Acts ch. 252 Part 1, H.10. The Foster Youth Transitional Assistance program, established through HB 380 2006 GA, provides $1,000,000 in each SFY 2007 and SFY 2008 to be distributed in assistance grants or vouchers to current or former foster youth ages eighteen (18) though twenty-three (23) for transitional assistance into independence. 2006 Ky. Acts ch. 252, Part 1, H.10 directs the Cabinet for Health and Family Services to promulgate administrative regulations, in accordance with KRS Chapter 13A, that implement the Foster Youth Transitional Assistance Program no later than October 1, 2006. An ordinary administrative regulation would not allow the agency sufficient time to implement the Foster Youth Transitional Assistance program by October 1, 2006. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:400E. Supportive services.

RELATES TO: KRS 199.011(4), 205.2003(3), 205.703, 209.020(2), 610.110(6), 45 C.F.R. Parts 260-265, 42 U.S.C. 601-679b [et seq.]

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150, 2006 Ky. Acts ch. 252, Part 1, H.10

EFFECTIVE: September 29, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet [for Health and Family Services]. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts Ch. 252 Part 1, H.10 requires the cabinet to promulgate an administrative regulation to implement the Foster Youth Transitional Assistance Program. This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in his home through the cabinet [for Health and Family Services], to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined at KRS 209.020(2).

(2) "Child" is defined at KRS 199.011(4) and as extended by KRS 610.110(6).

(3) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his individual needs.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2.006, Section 1(9) [(8)].

(5) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(6) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.

(7) "Preventative assistance" means a service to provide emergency funds to a family during crisis.

(8) "Safety net services" means:

(a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or

(b) Monetary benefits to assist in maintaining self-sufficiency.

(9) "Rehabilitative services" is defined at 907 KAR 3.020, Section 1(2).

(10) "Targeted case management" is defined at 907 KAR 3:020, Section 1(3).

Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if the individual or family:

(1) Makes a request for assistance for child care expenses;

(2) Needs child care for protection or prevention of child abuse, neglect or exploitation; or

(3) Needs child care for a child of a teen parent attending high school.

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380, Section 2, on behalf of a child entering out-of-home care through a:

(1) Voluntary commitment agreement; or

(2) Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

(a) Stabilizing a child in the child's own home or foster home;

(b) Preventing further hospitalization or institutionalization; and

(c) Enabling a child and the child's family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following:

(a) Mental retardation or developmental disability;

(b) Emotional or behavioral disturbance;

(c) Dual diagnosis;

(d) Risk of institutionalization; or

(e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

(a) Biological home;

(b) Foster home; or

(c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

(a) A comprehensive assessment, to include.

1. Review of medical, psychiatric, social and educational assessments conducted within the last twelve (12) months; and

2. An in-home assessment;

(b) When appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child and the hospital or institution to ensure:

1. A coordinated approach upon discharge; and

2. That communication is clear regarding behaviors, goals, and recommended interventions;

(c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;

(d) Family intervention services such as behavioral and family counseling to assist a child and family in:

1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or

2. Eliminating barriers to change;

(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;

(f) A paraprofessional attendant to provide direct in-home services to a child, a biological or foster parent, as identified in the case plan;

(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

(h) Art or music therapy from a qualified professional;

(i) Educational consultation and support;

(j) Crisis intervention;

(k) Skill development; or

(l) Other service identified in the case plan.

(6) The type, frequency, intensity and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

(a) Family strengths and needs;

(b) Goals, objectives, and tasks;

(c) Time frames; and

(d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

(a) Has total income at or below 200 percent of federal poverty level; and

(b) Is no longer eligible for K-TAP benefits due to:

1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2)(b); or

2. Reaching benefit time limitations established at 921 KAR 2.006, Section 20 [19].

(2) A safety net service shall include contact with the family and may address the following:

(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;

(b) Linkage to the appropriate resources; and

(c) Intervention in a crisis situation including:

1. Fuel shortage;

2. Utility shutoff;

3. Insufficient food, clothing, housing, or employment; or

4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family's safety net services.

(b) Up to a total of $635 may be paid over a period of four (4) months during a twelve (12) month period.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services' conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3.020, Section 3(1).

Section 7. Preventative Assistance. (1) Preventative assistance services shall be provided in order to:

(a) Assist an individual who is identified at-risk and is in need of protective services intervention;

(b) Prevent the removal of a child from his home; or

(c) Facilitate the return of a child to his natural parents.

(2) Preventative funds may be utilized for:

(a) Shelter;

(b) Food;

(c) Clothing;

(d) Utilities; and

(e) Other necessary services.

(3) The cabinet may authorize up to $500 in a state fiscal year to the appropriate vendor for a family.

Section 8. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:

(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 24 [23], and, if necessary, shall offer protective and general adult services; and

(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:

(a) Is in a domestic violence situation; and

(b) Has agreed to services.

Section 9. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent who is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of his safety, including assistance with an alternative living arrangement if necessary.

(2) The cabinet shall:

(a) Conduct a face-to-face contact with the minor teenager's parent and the minor parent's child;

(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent's current situation and the safety issues for the minor teenage parent and child,

(c) Determine if the minor teenager's parent or guardian accepts the minor teenager's living arrangement;

(d) Refer the family to the appropriate services;

(e) Provide the following to the Division of Family Support:

1. Identification of safety issues;

2. A recommendation regarding opening a protective or preventive services case on the family; and

3. Services to which the minor teenage parent has been referred.

Section 10. Foster Youth Transitional Assistance. (1) In accordance with 2006 Ky. Acts ch. 252, Part 1, H 10, grants or vouchers from the Foster Youth Transitional Assistance program shall be provided to:

(a) A youth that is eighteen (18) to twenty-three (23) years of age; and

(b)1. Currently in foster care; or

2. Formerly in foster care.

(2) A youth shall utilize funds for transitional assistance into independence for the following:

(a) Housing;

(b) Clothing;

(c) Transportation;

(d) Tuition; or

(e) Medical and dental services; and

(f) Other expenses that the cabinet may authorize for the youth.

(3) For each fiscal year, the cabinet may authorize:

(a) Up to $7,500 per working youth; and

(b) Up to an additional $2,500 per youth while attending a:

1. Community college; or

2. Four (4) year college or university.

Section 11. Incorporation by Reference. (1) "OOHC-1275, Fact Sheet-Intensive Family-based Support Services, edition 6/99" is incorporated by reference.

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON JR., Commissioner

APPROVED BY AGENCY: September 28, 2006

FILED WITH LRC: September 29, 2006 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation generally establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in his home through the cabinet, to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the provision of supportive services by the cabinet to vulnerable families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet shall promulgate administrative regulations to operate program and fulfill responsibilities vested in the cabinet. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement provisions of KRS Chapter 605, including KRS 605.130(4) authorizing the cabinet to take measures to protect children. 2006 Ky. Acts ch. 252 Part 1, H.10 requires the cabinet to implement the Foster Youth Transitional Assistance program no later than October 1, 2006. This administrative regulation conforms to the content of the authorizing statutes by establishing supportive services available to families receiving ongoing case management or to safely maintain a child in the child's home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by outlining supportive services offered by the cabinet to vulnerable families.

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

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds a section to implement the Foster Youth Transitional Assistance program and makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment implements the cabinet's additional supportive service of Foster Youth Transitional Assistance, as directed in 2006 Ky. Acts ch., 252 Part 1 H.10. The amendment to this administrative regulation is necessary to comply with the provisions of the 2006 Ky. Acts ch. 252 Part 1, H.10.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of 2006 Ky. Acts ch. 252 Part 1, H.10 by ensuring the cabinet has established regulatory authority to implement the Foster Youth Transitional Assistance program no later than October 1, 2006.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of statutes through its compliance with 2006 Ky. Acts ch. 252 Part 1, H.10. The amendments outlines the qualification process used by the cabinet to determine whether, and to what extent, a current or former foster youth is eligible for funds for transitional assistance into independence. The amendment also makes other technical corrections to ensure compliance with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 6 vendors are presently under contract to provide independent living services through the federal Chafee Foster Care Independence Program. These existing Chafee contracts will be modified to accommodate disbursement of the 2006 Ky. Acts ch. 252 Part 1, H.10 appropriation. Approximately 100-150 current or former foster youth will benefit from an expansion of these services through state Foster Youth Transitional Assistance program expenditures.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Existing Chafee Foster Care Independence Program vendors will have to take the actions of accepting modifications of their contracts to provide and receive reimbursement for, any additional independent living services under the Foster Youth Transitional Assistance program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Existing Chafee Foster Care Independence Program vendors will be completely reimbursed for the provision of any additional independent living services under the Foster Youth Transitional Assistance program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Existing Chafee Foster Care Independence Program vendors will be completely reimbursed for the provision of any additional independent living services under the Foster Youth Transitional Assistance program.

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

(a) Initially: The Foster Youth Transitional Assistance Program, established through HB 380 2006 GA provides $1 million dollars in each SFY 2007 and SFY 2008 to be distributed in assistance grants or vouchers to current or former foster youth ages 18 through 23 for transitional assistance into independence. No additional administrative costs are being withheld by the cabinet.

(b) On a continuing basis: The Foster Youth Transitional Assistance Program, established through HB 380 2006 GA provides $1 million dollars in each SFY 2007 and SFY 2008 to be distributed in assistance grants or vouchers to current or former foster youth ages 18 through 23 for transitional assistance into independence. No additional administrative costs are being withheld by the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund – 100%.

(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 change to 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 establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering as this administrative regulation will be implemented statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.150, and 2006 Ky. Acts ch. 252 Part 1, H.10.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will require no additional costs for administration.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158 6451, 161.020, 161.028(1), 161 030
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Experienced teacher standards" means the standards established in 16 KAR 1 010 that identify what an effective experienced teacher shall know and do.

(8) "New teacher standards" means the standards established in 16 KAR 1:010 that identify what a new teacher shall know and be able to do.

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area **that** ~~[which]~~ can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

(a)1. At least a bachelor's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

2. As required by Section 4(2)(g)6 and (4)(e) of this administrative regulation, a master's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade-point average of 3 00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The experienced teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8.020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 8·030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4.060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The new teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4 060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2.040;

(b) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;

2. Middle school option 2: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;

3. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Technology education;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian;

(g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or
7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades 8-12;
(b) Sociology, grades eight (8) through twelve (12);
(c) Journalism, grades eight (8) through twelve (12);
(d) Speech/media communications, grades eight (8) through twelve (12);
(e) Theater, primary through grade twelve (12);
(f) Dance, primary through grade twelve (12);
(g) Computer information systems, primary through grade twelve (12); or
(h) English as a second language, primary through grade twelve (12).

(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Computer science, grades eight (8) through twelve (12);
(b) English as second language, primary through grade twelve (12);
(c) Gifted education, primary through grade twelve (12);
(d) Driver education, grades eight (8) through twelve (12);
(e) Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);
(f) Instructional computer technology, primary through grade twelve (12);
(g) Other instructional services - school safety, primary through grade twelve (12);
(h) Other instructional services - environmental education, primary through grade twelve (12);
(i) Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:

1. Completion of the requirements of Section 5(2) of this administrative regulation; or
2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSA); or

(j) Learning and behavior disorders, grades eight (8) through (12).

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and
2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program.

(3)(a) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., **a professionally certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection** [~~the Education Professional Standards Board establishes an~~] [~~a time limited~~] [~~option for professionally certified teachers to add certificate endorsements and/or extensions~~].

(b) [~~For applications received from the effective date of this administrative regulation through June 30, 2006,~~] A certificate extension or certificate endorsement **shall** [~~may~~] be issued if an educator submits a completed application and meets the following requirements:

1. A valid Kentucky professional teaching certificate;
2. Current employment in a certified position or a bona fide offer of employment in a certified position in a Kentucky public school;
3. Successful completion of the applicable content assessments; and

4. Either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the HOUSSE Index contained within the application form, TC-HQ. Coursework shall [~~must~~] be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(4) If a teacher currently holds a professional certificate in the secondary grades, eight (8) through twelve (12), and applies for a certificate extension or endorsement in the same content area for middle school grades five (5) through nine (9), the teacher shall not be required to complete the content assessment.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-1, rev. 4/2004, Education Professional Standards Board; and

(b) Form TC-HQ, edition 4/2004, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:020. Occupation-based career and technical education certification.

RELATES TO: KRS 156.095, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The certificates for occupation-based career and technical education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers employed by the public schools, the Office of Career and [~~Department for~~] Technical Education of the Department of Workforce Investment [~~Development Cabinet~~], the Kentucky Community and Technical College System, or the Kentucky Department of Education.

(2) The certificates may be issued for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the Kentucky [~~State Plan for Career and Technical Education established in 704 KAR 3.304 or the Kentucky~~] Program of Studies established in 704 KAR 3.303.

(3) Certificates for occupation-based career and technical education established in this administrative regulation:

(a) Shall be initially issued to teacher candidates who are employed based upon required occupational experience in the subject area to be taught; and

(b) Shall not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial issuance. A provisional internship certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year upon completion of the following requirements:

(a) High school graduation or its equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center;

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, with:

1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited vocational preparation program for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education, the Department of Workforce Investment [~~for Technical Education~~], or the Kentucky Community and Technical College System;

(c) The [~~completion of the~~] testing provisions established in 16 KAR 6:020; and

(d) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment [~~for Technical Education~~], or the Kentucky Community and Technical College System.

(2) First renewal of one (1) year provisional certificates. [~~(a)~~] The first renewal of the one (1) year provisional certificate shall require the successful completion of:

(a) The Kentucky Teacher Internship Program established in 16 KAR 7.010; and

(b) [~~The completion of~~] Three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Department of Workforce Investment [~~for Technical Education~~]

(3) Subsequent renewal of one (1) year provisional certificate. [~~(a)~~] Any subsequent renewal of the one (1) year provisional certificate after the successful completion of the internship shall require:

(a) The completion of a minimum of six (6) semester hours of college credit for each renewal selected from the sixty-four (64) semester hour planned program for the preparation of teachers in information technology, industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and

(b) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070.

(4) Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements.

(5) [~~(4)~~]The one (1) year provisional certificate shall be limited to nine (9) one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.

(6) [~~(5)~~] [~~Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency shall be applied toward the certificate renewal requirements established in this section.~~

~~(7)~~] [~~(6)~~] Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:

(a) Receive the professional certificate established in Section 3 of this administrative regulation [~~valid for five (5) years~~]; and

(b) Adhere to the subsequent renewal requirements estab-

lished in Section 3(3) of this administrative regulation.

Section 3. Issuance and Renewal of the Professional Certificate. (1) Initial Issuance. A professional certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year upon completion of the following requirements:

(a) Compliance with Section 2(1) of this administrative regulation; and

(b) The completion of a planned program consisting of a minimum of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.

(2) First renewal.

(a) The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7.010.

(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.

(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:

(a) Three (3) years of teaching or occupational experience in the occupational specialty; or

(b) Six (6) semester hours of college credit related to the certification area.

Section 4. The planned program for occupation-based career and technical education teachers shall:

(1) Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity;

(2) Utilize the proficiency evaluation established in 16 KAR 5.030;

(3) Be based upon the experienced teacher standards established in 16 KAR 1:010;

(4) Meet the specialty program association standards established in 16 KAR 5:010; and

(5) Be accredited by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5.010.

Section 5. Information Technology Teachers. (1) A teacher shall possess one (1) of the following credentials to instruct in the field of information technology:

(a) Provisional certificate established in Section 2 of this administrative regulation;

(b) Professional certificate established in Section 3 of this administrative regulation;

(c) Computer information systems certificate established in 16 KAR 2.010;

(d) Computer science endorsement established in 16 KAR 2:010; or

(e) Instructional computer technology endorsement established in 16 KAR 2.010.

(2) If a qualified teacher is not available for the position of information technology teacher, as attested to by the local school superintendent or the Commissioner of the Department of Workforce Investment [~~Technical Education~~], a one (1) year probationary certificate may be issued under the requirements established in 16 KAR 2:190.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:140. Probationary certificate for teachers of children, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes a plan for recruiting qualified individuals into positions for teachers of children ages birth to primary age.

Section 1. Definition. "Qualified teacher" means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval identified in 16 KAR 2:040, Section 5.

Section 2. If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary interdisciplinary early childhood education certificate be issued as provided in this administrative regulation.

(1) A prerequisite for a one (1) year probationary interdisciplinary early childhood education certificate for teaching children, birth to primary age, shall be:

(a) A certificate or statement of eligibility in kindergarten or elementary special education;

(b) A baccalaureate or advanced degree in early childhood education, early childhood special education, or child development with:

1. A cumulative minimum grade point average of 2.50 on a 4.00 scale; or

2. A minimum grade point average of 3.00 on a 4.00 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

(c) A certificate in another area, if the applicant has had one (1) year of teaching children birth through age five (5) years.

(2) The applicant shall have:

(a) Enrolled in an approved preparation program for certification in interdisciplinary early childhood education established in 16 KAR 2:040; and

(b) Completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.

(3) The requirements established in subsection (2) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an approved interdisciplinary early childhood education preparation program.

(4) The applicant shall complete twelve (12) clock hours of training established by the Kentucky Department of Education prior to employment.

(5) The applicant shall complete an additional six (6) clock hours of training established by the Kentucky Department of Education within the first three (3) months of employment.

(6) To apply for the probationary interdisciplinary early child-

hood education certificate, the applicant shall submit a completed Form TC-BP to the Education Professional Standards Board.

Section 3. Requirements for Renewal of a Probationary Interdisciplinary Early Childhood Education Certificate. (1) The first renewal of the probationary interdisciplinary early childhood education certificate shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school as a teacher of children ages birth to primary;

(b) Completion of at least six (6) semester hours or its equivalent from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract; and

(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7.010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2)(a) Subsequent one (1) year renewals of the probationary interdisciplinary early childhood education certificate shall require at least six (6) semester hours or its equivalent of additional credit from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract.

(b) The [~~In compliance with the federal No Child Left Behind Act of 2001 requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56, the~~] total validity period of the probationary certificate for interdisciplinary early education shall not exceed three (3) years **in compliance with the No Child Left Behind Act of 2001, 20 U.S.C. 7801(23) and 34 C.F.R. 200.56.**

(3) Upon successful completion of all program requirements for the approved interdisciplinary early childhood education preparation program established in 16 KAR 2:040, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for interdisciplinary early childhood education, birth to primary, valid for five (5) years shall be issued.

(4) Program requirements for completion of the interdisciplinary early childhood education preparation program while serving on the probationary certificate established in this administrative regulation shall not include student teaching.

Section 4. Incorporation by Reference. (1) Form TC-BP, rev. 10/02, Education Professional Standards Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:150. Probationary certificate for teachers of technology education.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education.

Section 1. Definition. "Qualified teacher" means a teacher who holds certification as a technology education teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of Technology Education. (1) If a qualified teacher is not available for the position of technology education teacher as attested to by the local superintendent, the superintendent may request that a one (1) year probationary certificate be issued for a specific technology education offering as approved by the Division of Career and Technical Education to a teacher who:

(a) Holds one (1) of the following:

1. A valid classroom teaching certificate for teaching in the middle school or secondary school; or

2. A bachelor's degree in a related area of concentration or major approved by a Division of Career and Technical Education technology consultant [,] and a designated university teacher educator;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or

2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Meets the minimum standards for admission to a teacher education preparation program at an approved institution of higher education;

(d) Develops a continuous plan for curriculum completion with an approved institution for technology education; and

(e) Documents 1000 clock hours or six (6) months of full-time employment of work related experience or other exceptional life experience related to teaching technology education.

(2) Upon completion of all requirements established in subsection (1) of this section, the candidate shall be issued a probationary certificate for teachers of technology education, valid for one (1) year. The Division of Career and Technical Education, in cooperation with a technology education teacher educator, shall grant approval for each course to be taught by a probationary teacher.

Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of Technology Education. (1) The first renewal of the probationary certificate for teachers of technology education shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;

(b) Completion of eighteen (18) clock hours of orientation and management training provided through the technology education new teacher institute, within the first six (6) weeks of employment;

(c) Completion of at least six (6) semester hours from the continuous curriculum plan; and

(d) Successful completion of the internship program required by KRS 161.030 and 16 KAR 7:010.

(2) The [~~continued one (1) year renewal of the~~] probationary certificate may be renewed a maximum of two (2) times and shall require at the time of application proof of the completion of at least six (6) hours of additional credit from the preapproved continuous curriculum plan.

(3) Upon successful completion of all requirements for an approved teacher preparation program, including successful completion of all required assessments identified in 16 KAR 6.010, a professional certificate for industrial technology shall be issued valid for five (5) years.

Section 4. **Approval of Additional Technology Offerings. A**

teacher with a probationary certificate may be approved to teach [~~Requirements for Extending the Probationary Certificate. The probationary certificate may be extended to include~~] additional technology education offerings upon recommendation by the Division of Career and Technical Education and the technology education teacher educator. [~~The renewal requirements for the probationary certificate as outlined in Section 3 of this administrative regulation apply to extensions of the probationary certificate.~~]

Section 5. Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for technology education teachers shall [~~may~~] be substituted for the student teaching requirement.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p m.
CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:160. Probationary certificate for teachers of exceptional children.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161 020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. If a qualified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued as provided in this administrative regulation.

(1)(a)1. A valid classroom certificate or an internship statement of eligibility for grades K-4, 1-8, P-5, 5-9, or 5-8 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(b)1. A valid classroom teaching certificate or an internship statement of eligibility for grades 7-12, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for the endorsement for learning and behavior disorders, grades 8-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(c)1. A valid classroom teaching certificate or an internship statement of eligibility for grades K-4, 1-8, 5-8, 7-12, P-5, 5-9, 8-12, all grades, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for teaching the moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in a preparation program for teaching the moderately and severely disabled and shall have completed nine (9) semester hours of credit from the special education component of the approved curriculum for teaching the moderately and severely disabled.

(d)1. A certificate for teaching exceptional children, including interdisciplinary early childhood education, shall be a prerequisite for a one (1) year probationary certificate for teaching learning and behavior disorders, grades P-12; the endorsement for learning and behavior disorders, grades 8-12; hearing impaired, grades P-12; visually impaired, grades P-12; or moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(2) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services.

(3)(a) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) hours of training during the spring conference of the Council for Exceptional Children; or

(b) If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training conducted or approved by the Kentucky Department of Education, Division of Exceptional Children Services [~~offered through one (1) of the state's eleven (11) special education cooperatives~~]. The applicant shall contact the Division of Exceptional Children Services to schedule the training. The training shall be similar to the topics covered at the conferences.

(4) The Kentucky Department of Education shall report to the Education Professional Standards Board those probationary certified teachers of exceptional children who have not completed the training requirements established in subsections (2) and (3) of this section by June 30 of each year for the preceding school year.

(5) Application for a probationary certificate for a teacher of exceptional children shall be made on Form TC-19.

Section 3. The [~~renewal of the one (1) year~~] probationary certificate for teachers of exceptional children may be renewed a maximum of two (2) times and shall require at the time of application, proof of the completion of a minimum of six (6) semester hours of additional credit from the special education component to be completed by September 1 of the year of expiration.

Section 4. Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of exceptional children under this administrative regulation shall complete the assessment requirements identified in 16 KAR 2:010 and 16 KAR 6.010 for teaching exceptional children, grades primary through twelve (12).

Section 6. Incorporation by Reference. (1) "Form TC-19", revised 7/2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-460, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 2:170. Probationary certificate for middle school teachers.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the probationary certificate for middle school teachers and the requirements for issuance and renewal of this certificate.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a middle school teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Issuance of the Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) If a qualified teacher is not available for the position of middle school teacher at the grade level and content area necessary as attested by the local superintendent, the superintendent may request a one (1) year probationary certificate for a teacher who:

(a) Holds at least a valid Kentucky teaching statement of eligibility or Kentucky teaching certificate issued by the Education Professional Standards Board;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or

2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Has an offer of employment from a Kentucky school district or accredited nonpublic school in grades five (5) through nine (9) in a content area or areas;

(d) Has enrolled in an approved middle school preparation program for the content area or areas for which certification is sought; and

(e) Has successfully completed at least twelve (12) semester credit hours of content coursework in each content area for which certification is sought.

(2) Application shall be made on Form TC-MG.

(3) Compliance with the requirements established in subsection (1)(d) and (e) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an approved middle school preparation program in the content area or areas for which certification is sought.

(4)(a) Upon completion of all requirements established in this section, the applicant shall be issued a probationary certificate for middle school teachers in the content area or areas valid for one (1) year.

(b) The probationary certificate shall be valid for teaching grades five (5) through nine (9) in the content area or areas indicated on the face of the certificate.

Section 3. Requirements for Renewal of a Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) The first renewal of the probationary certificate for middle school teachers shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in grades five (5) through nine (9) in the content area or areas indicated on the initial probationary certificate;

(b) Completion of at least six (6) semester hours or its equivalent from the approved middle school preparation program as indicated on the teacher's curriculum contract; and

(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7.010. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who are not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2)(a) Subsequent one (1) year renewals of the probationary certificate for middle school teachers shall require at least six (6) semester hours or its equivalent of additional credit from the approved middle school preparation program as indicated on the teacher's curriculum contract.

(b) The ~~[In compliance with the federal No Child Left Behind Act of 2001, requirements established in 20 U.S.C. 7801(23) and 34 C.F.R. Part 200.56, the]~~ total validity period of the probationary certificate for middle school teachers shall not exceed three (3) years **in compliance with the No Child Left Behind Act of 2001, 20 U.S.C. 7801(23) and 34 C.F.R. 200.56.**

(3) Upon successful completion of all program requirements for the approved middle school preparation program, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching middle school established in 16 KAR 2.010 and valid for five (5) years shall be issued.

(4) Program requirements for completion of the middle school preparation program while serving on the probationary certificate for middle school teachers shall not include student teaching.

Section 4. Incorporation by Reference. (1) Form TC-MG, rev. 7/2002, Education Professional Standards Board, is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 3:080. Career and technical ~~[Vocational]~~ education administrators.

RELATES TO. KRS 161 020, 161.025, 161.027, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed and approved by the Education Professional Standards Board ~~[by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]~~, furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates ~~[on the basis of standards and procedures recommended by the council and approved]~~ by the Education Professional Standards Board ~~[state board]~~. KRS 161.027 **establishes** ~~[moreover, mandates]~~ testing and internship requirements for principals. This administrative regulation establishes appropriate certificate conditions for their issuance and renewal, and re-

lates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for Preparation-Certification of Professional School Personnel for career and technical [vocational] education administrators.

Section 1. [(1)] The certificate for administration, supervision, and coordination of vocational education issued only through January 4, 1988 [and only] under prior versions of this administrative regulation **shall:**

(1) Not [shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education administrative regulations to an applicant who has at least two (2) years of teaching experience in a vocational education teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for Preparation-Certification of Professional School Personnel, as incorporated by reference in 16 KAR 5:013.

(2) The certificate for administration, supervision, and coordination of vocational education] [does not of itself] qualify the holder for any vocational education position; **and**

(2) Be [but rather it is] designated as one of the several requirements for certain positions of administration, supervision, and coordination as identified in the Kentucky State Plan for Vocational **Technical** Education, as incorporated by reference in 780 [705] KAR 1.010.

[(3) The duration of the certificate for administration, supervision, and coordination of vocational education shall be for continuing service.

(4) The certificate for administration, supervision, and coordination of vocational education programs may be issued for an initial period of one (1) year upon completion of eight (8) semester hours credit selected from the prescribed curriculum and upon completion of the other nonacademic prerequisites. The remaining curriculum requirements shall be completed by September 1 of the calendar year following the year of initial issuance. The certificate may then be renewed for continuing service.

(5) When a qualified person is not available for a critical administrative position, the Superintendent of Public Instruction may approve a one (1) year endorsement of a vocational teaching certificate for the administration, supervision, and coordination of vocational education, provided the application includes a plan of in-service growth and development showing how the applicant and his employer will work toward meeting the full requirements.

(6) The provisions of this section shall expire on January 4, 1989; instead, new candidates may qualify for the certificate for vocational school principal outlined in Section 2 of this administrative regulation or the certificate for vocational education supervision and coordination outlined in Section 3 of this administrative regulation.]

Section 2. (1) The certificate for career and technical [vocational] school principal shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board [State Board of Education] administrative regulations to an applicant who has:

(a) at least three (3) [two (2)] years of teaching experience in a career and technical [vocational] education teaching assignment; **and**

(b) [and who has] completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures for approval of preparation programs as **established** [outlined] in 16 KAR 5:010 [included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, 16 KAR 5:013, TEC 90-0].

(2) The certificate shall be issued and renewed in accordance with the [testing and internship] provisions of KRS 161.027, **16 KAR 6:030, and 16 KAR 7:020** [and related administrative regulations].

(3)(a)1. The initial certificate for career and technical [vocational] school principal shall be issued for a duration period of one (1) year upon:

a successful completion of the approved curriculum and the tests prescribed under KRS 161.027 and 16 KAR 6:030; **and**

b. [and upon] obtaining employment for an internship position as principal or assistant principal of a career and technical [vocational] school.

2. During the period of validity of the one (1) year certificate, the internship program for career and technical [vocational] school principals as outlined in KRS 161.027 shall be completed.

3. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(b) 1. The certificate shall be renewed subsequently for five (5) year periods.

2. Each five (5) year renewal thereafter shall require the completion of:

a. Two (2) years of experience as a career and technical [vocational] school principal, [or]

b. Three (3) semester hours of additional graduate credit related to the position of career and technical [vocational] school principal, [or] c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(4) In compliance with KRS 161.027, persons applying for the certificate for career and technical [vocational] school principal who satisfy the curriculum requirements and all other prerequisites, and who have completed at least two (2) years of successful full-time experience, including at least 140 days per year, as a career and technical [vocational] school principal, within a ten (10) year period prior to making application, **shall be:**

(a) [will be] Exempt from the internship requirements for career and technical [vocational] school principal; **and**

(b) [, but shall be] required to pass the written examinations required by KRS 161.027 and the governing administrative regulation.

(5)(a) [5. (1)] The certificate for career and technical school principal shall be valid for the position of principal at a career and technical school.

(b) [(2)] The hiring authority of a career and technical school may [also] employ as a principle a candidate who possesses the following:

1. [(a)] A valid Kentucky certificate or statement of eligibility for instructional leadership- school principal;

2. [(b)] A valid Kentucky certificate for a career and technical education; and

3. [(c)] A minimum of three (3) years of teaching experience in the field of career and technical education.

Section 3. (1) The certificate for career and technical education principal [vocational education supervision and coordination] shall be issued in accordance with the pertinent Kentucky statutes [and State Board of Education administrative regulations] to an applicant who has at least three (3) [two (2)] years of teaching experience in a career and technical [vocational] education teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures of the Education Professional Standards Board pursuant to 16 KAR 5:010 [included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, 16 KAR 5:013, TEC 90-0].

(2)**(a)**The certificate for career and technical [vocational] education **principal** [supervision and coordination] shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) year periods.

(b) Each five (5) year renewal shall require the completion of:

1. Two (2) years of experience as a supervisor or coordinator of career and technical [vocational] education;

2. [, or] Three (3) semester hours of additional graduate credit related to the position of supervisor or coordinator of career and technical [vocational] education;

3. [, or] Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 5:040. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that educator preparation [~~a teacher education~~] institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161 042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for supervising teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

Section 1. Definition. "Cooperating teacher" or "supervising teacher" means a teacher employed in a school in Kentucky who is contracting with an educator preparation [~~a teacher education~~] institution to supervise a student teacher for the purpose [~~purposes~~] of fulfilling the student teaching requirement of the approved educator [~~teacher~~] preparation program.

Section 2. Cooperating Teacher Eligibility Requirements. (1) Except as provided in subsection (2) [~~or (3)~~] of this section, the cooperating teacher, whether serving in a public or nonpublic school, shall have:

(a) A valid Kentucky teaching certificate for each grade and subject taught;

(b) Attained Rank II certification;

(c) At least three (3) [~~four (4)~~] years of teaching experience on a Professional Certificate; and

(d) Taught in the present school system at least one (1) year immediately prior to being assigned a student teacher.

(2) If a cooperating teacher has not attained Rank II certification, the teacher shall have attained a minimum of fifteen (15) hours of approved credit toward a Rank II within a minimum period of [~~this requirement shall be waived if the teacher:~~

~~(a) Has at least twenty (20) years of teaching experience, and~~

~~(b) Has worked as a cooperating teacher during the past~~] five (5) years

(3) Teachers assigned to a teaching position on the basis of a probationary or emergency certificate issued by the Education Professional Standards Board [~~under KAR Title 16~~] shall not be eligible for serving as a cooperating teacher.

(4) In selecting a cooperating teacher, the district shall give consideration to the following criteria:

(a) A demonstrated ability to engage in effective classroom management techniques that promote an environment conducive to learning;

(b) An ability to model best practices for the delivery of instruction;

(c) A mastery of the content knowledge or subject matter being taught;

(d) The demonstration of an aptitude and ability to contribute to the mentoring and development of a preservice educator;

(e) An ability to use multiple forms of assessment to inform instruction; and

(f) An ability to create a learning community that values and builds upon student's diverse cultures

Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards which are incorporated under 16 KAR 5:010, each educator preparation [~~teacher education~~] institution shall determine minimum standards for admission to student teaching which shall include the procedures established in this section. Admission to student teaching shall include a formal application procedure for each teacher candidate.

(1) A record or report from a valid and current medical examination, which shall have included a tuberculosis test, shall be placed on file with the admissions committee.

(2) Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1.020.

Section 4. Teacher-student Ratio. The ratio of student teachers to cooperating teachers shall be one (1) to one (1).

Section 5. College Supervisor [~~Coordinator~~]. (1) The college supervisor [~~coordinator~~] shall make [a] periodic observations [~~observation~~] of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation reports [~~report~~] shall be filed as a part of the student teacher record and also used as a validation of the supervisory function.

(3) A student teacher shall receive periodic and regular on-site observations [~~observation~~] and critiques [~~a critique~~] of the actual teaching situation a minimum of four (4) times excluding seminars and workshops.

(4) The college supervisors [~~coordinator~~] shall be available to work with the student teacher and personnel in the cooperating school regarding any problems [~~on a problem~~] that may arise relating to the student teaching situation.

Section 6. Professional Experience. (1) In addition to the appropriate NCATE standards incorporated by reference under 16 KAR 5:010, the educator preparation [~~teacher education~~] institution shall provide an opportunity for the student teacher to assume major responsibility for the full range of teaching duties in a real school situation under the guidance of qualified personnel from the educator preparation institution and [~~of higher education or~~] the cooperating elementary, middle, or high [~~secondary~~] school. In placing the student teachers in classroom settings, the educator preparation program and the school district shall make reasonable efforts to place student teachers in settings that [will] provide experiences, situations, and challenges similar to those encountered by first year teachers.

(2) Each educator preparation [~~teacher education~~] institution shall provide a full professional semester to include a period of student teaching for a minimum of twelve (12) weeks, full day, or equivalent, in school settings that correspond to the grade levels each and content area [area(s)] of [~~within the grade levels corresponding to~~] the student teacher's certification program.

Section 7. Compensation of Cooperating Teachers. (1) The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a cooperating teacher to each student teacher.

(2)(a) The educator preparation [~~teacher education~~] institution shall electronically submit a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board:

1. On or before October 15 for a cooperating teacher supervising a student teacher during the fall semester; or

2. On or before February [~~March~~] 15 for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The number of contract weeks that the cooperating teacher is working with each student teacher for that semester;

2. The cooperating teacher's full name and certificate number;

3. The student teacher's full name, Social Security number, [~~and~~] demographic data, and contact information;

4. The student teacher's preparation and certification area by

assigned certification code;

5. [~~The student teacher's anticipated graduation date; and~~

~~6.~~] The names [~~name~~] and assigned codes [~~code~~] of the school and school district where the cooperating teacher is employed and the student teaching requirement is being fulfilled. If the certified cooperating teacher is employed in a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association, the institution shall submit the name, assigned code, and address of the school.

(c) If an educator preparation [~~a teacher education~~] institution fails to provide the report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation.

(3)(a) Upon receipt of the report, the Education Professional Standards Board shall submit a "Cooperating Teacher Payment Voucher" to each cooperating teacher.

(b) The voucher, or its electronic equivalent if available, shall be signed by the cooperating teacher, building principal, and the college supervisor [~~coordinator~~] as verification of the cooperating teacher's service to the student teacher.

(c) To be eligible for compensation under this administrative regulation, the cooperating teacher shall submit the completed voucher to the Education Professional Standards Board:

1. On or before December 15 for a cooperating teacher supervising a student teacher during the fall semester; or

2. On or before May 1 [~~15~~] for a cooperating teacher supervising a student teacher during the spring semester.

(d) If a cooperating teacher fails to provide the completed voucher, or its electronic equivalent, by the date established in paragraph (c) of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation.

(4)(a) The [~~maximum amount of the per semester~~] payment to a cooperating teacher shall be determined based upon available funding allocated under the biennial budget bill and the total number of weeks served by all cooperating [~~student~~] teachers reported for the fiscal year.

(b) The payment shall be allocated to a cooperating teacher based upon the number of weeks [~~semesters~~] the teacher supervised a student teacher as reported in subsections (2) and (3) of this section.

[~~(c) A cooperating teacher who supervises a student teacher for only a portion of the semester shall have the payment prorated accordingly.~~

~~(d) The per semester payment to a cooperating teacher shall not exceed the maximum amount established in paragraph (a) of this subsection.~~]

(5) Payments to cooperating teachers shall be disbursed to the school districts or to cooperating teachers in nonpublic schools by the Education Professional Standards Board:

(a) On an annual basis; and

(b) On or before June 15.

(6) Compensation to cooperating teachers shall be provided under this administrative regulation if state funds are appropriated for this purpose. Payment of state funds under this administrative regulation shall:

(a) Be a supplement to the compensation provided by an educator preparation [~~a teacher education~~] institution to a cooperating teacher who is supervising an institution's student teacher; and

(b) Not supplant the educator preparation [~~teacher education~~] institutions' compensation responsibility.

Section 8. Incorporation by Reference. (1) "Cooperating Teacher Payment Voucher", revised 7/2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(a) requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky and serve a one (1) year internship. This administrative regulation establishes the tests and passing scores for occupation-based career and technical education teachers certified under 16 KAR 2:220.

Section 1. (1) All new information technology, industrial education, health science, human services occupation, and public service teacher applicants, and other applicants for occupation-based career and technical education teacher certificates both with and without a teacher preparation degree, [;] and out-of-state applicants for occupation-based career and technical education certification with less than two (2) years of teaching experience shall successfully complete the appropriate written tests prior to initial Kentucky certification.

(2) Each applicant without an educator [~~a teacher~~] preparation degree shall successfully complete either the Pre-Professional Skills Test (PPST) or the COMPASS Test for communication skills and general knowledge.

(3) All applicants shall demonstrate subject matter competency via passage of the specialty test in the occupational area for which certification is to be granted or completion of the appropriate state or national industry licensure, certification, or registration as established in this administrative regulation.

(4) The certificates and examination prerequisites shall be divided into the following four (4) categories:

(a) Industrial education:

1. National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one (1) corresponding to the teaching specialty is available;

2. Kentucky Department of Education or Kentucky Department of Workforce Investment [~~for Technical Education~~] developed or identified assessment corresponding to the teaching specialty;

3. Appropriate state or national industry licensure, certification, or registration; or

4. Minimum postsecondary educational attainment in a related area of study;

(b) Health science and human services occupations. The appropriate state or national industry licensure, certification, or registration;

(c) Public-service. The appropriate state or national industry licensure, certification, or registration; or

(d) Information technology. The appropriate national industry-recognized information technology certification.

Section 2. The Education Professional Standards Board shall require the specialty tests and passing scores or other examination prerequisites identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) Preprofessional Skills Test:

(a) Reading - 167;

(b) Mathematics - 166; and

(c) Writing - 167;

(2) In lieu of the Preprofessional Skills Tests identified in subsection (1) of this section, a new teacher applicant may meet the testing requirement by obtaining the following COMPASS Test scores:

(a) Reading - 78;
(b) Prealgebra - 48; and
(c) Writing - 68.

(3) Specialty area tests or other examination prerequisites for occupation-based certification [~~industrial education~~]:

(a) Air conditioning technology. NOCTI Heating, Ventilation and Air Conditioning (#144) - 63;

(b) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;

(c) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;

(d) Major appliance technology. NOCTI Appliance Repair (#277) - 64;

(e) Auto body technology:

1. NOCTI Collision Repair/Refinishing Technology Test (#138) - 61; or

2. Automotive Service Excellence (ASE) certification;

(f) Automotive technology:

1. NOCTI Automotive Technician Test (#303) - 63; or

2. Automotive Service Excellence (ASE) certification;

(g) Building and apartment maintenance. NOCTI Building Trades Maintenance (#125) - 52;

(h) Wood manufacturing technology. NOCTI Cabinetmaking and Millwork (#124) - 49;

(i) Carpentry. NOCTI Carpentry (#207) - 58;

(j) Visual communication art. NOCTI Advertising and Design (#136) - 69;

(k) Diesel technology:

1. NOCTI Diesel Mechanics (#152) - 62; or

2. Automotive Service Excellence (ASE) certification;

(l) Computer-aided drafting. NOCTI Technical Drafting and Design (#039) - 62;

(m) Electrical technology. NOCTI Electrical Construction (#261) - 45;

(n) Electronics technology. NOCTI Electronics Technology (#253) - 44;

(o) Graphic technology. NOCTI Graphic Imaging Technology (#137) - 62;

(p) Heavy equipment operation. Commonwealth of Kentucky license for equipment taught;

(q) Industrial maintenance technology. NOCTI Industrial Technology (#076) - 44;

(r) Interior finishing and design. NOCTI Painting and Decorating (#135) - 44;

(s) Machine tool technology. NOCTI Precision Machining (#220) - 50;

(t) Masonry - NOCTI Masonry (#209) - 64;

(u) Multimedia:

1. NOCTI Graphic Imaging Technology (#137) - 62;

2. Macromedia Certified Professional; or

3. Adobe Certified Expert;

(v) Plumbing technology. NOCTI Plumbing (#110) - 55;

(w) Radio and television production. NOCTI Audiovisual Communication Technology (#249) - 52;

(x) Metal fabrication. NOCTI Sheet Metal (#211) - 60;

(y) Small engine repair technology:

1. NOCTI Air-cooled Gas Engine Repair (#256) - 71; or

2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;

(z) Welding:

1. NOCTI Welding (#121) - 53; or

2. American Welding Society (AWS) Certified Welder;

(aa) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;

(bb) Construction. NOCTI Carpentry (#207) - 58;

(cc) Engineering technology. Bachelor's degree in engineering;

(dd) Environmental technology. No test identified;

(ee) Heavy highway construction. No test identified;

(ff) Manufacturing:

1. NOCTI Industrial technology (#076) - 44; or

2. NOCTI Precision Machining (#220) - 50;

(gg) Marine technology. NOCTI Marine Mechanics (#131) - 78; or

(hh) Plastics technology. No test identified;

(4) [~~(3)~~] Specialty area tests or other examination prerequisites for health science and human services occupations:

(a) Barbering **A license for teacher of barbering issued by the** [~~The~~] Kentucky Board of Barbering [~~Instructors' License~~];

(b) Cosmetology. **A license for instructor of cosmetology issued by the** Kentucky Board of Hairdressers and Cosmetologists [~~Instructors' License~~];

(c) Health science. Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;

(d) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;

(e) Practical nursing. **Practical** [~~Registered~~] Nurse License in Kentucky and meet applicable accrediting body state and federal requirements.

(f) Culinary arts. In the field of culinary arts, an individual **shall** [~~must~~] provide proof of one (1) of the following prerequisites:

1. NOCTI Quantity Foods (#225) - 55;

2. NOCTI Quantity Food Preparation (#117) - 39; or

3. American Culinary Federation Professional Certification.

(5) [~~(4)~~] Specialty area tests or other examination prerequisites for public service:

(a) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council,

(b) Fire and rescue training. State Fire Commission Instructor Certification;

(c) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky **Board of Emergency Medial Services** [~~EMS Board~~]; or

(6) [~~(5)~~] Specialty area tests for information technology:

(a) Computing Technology Industry Association (CompTIA):

1. A+ Certification;

2. I-Net+ Certification;

3. Server+ Certification; or

4. Network+ Certification;

(b) Cisco Certified Network Associate (CCNA);

(c) Microsoft Certified Professional (MCP);

(d) Novell Certified Administrator (CAN); or

(e) NOCTI Computer Technology Test (#226) - 63 [~~no test identified~~].

Section 3. Teacher applicants in any occupation-based career and technical education programs for which no appropriate specialty test is yet available shall not be required to take a specialty test, except for research and validation purposes. After a new program has been piloted and fully implemented, a test shall be developed or identified and a new teacher applicant shall be required to pass a designated specialty test.

Section 4. (1) Applicants for initial certification may take the written tests on any of the dates established by the Kentucky Department of Workforce Investment [~~for Technical Education~~], with the tests to be administered on a regular basis.

(2) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department of Workforce Investment [~~for Technical Education~~].

(3) An applicant shall seek information regarding the dates and location of the tests and make application to the Kentucky Department **of Workforce Investment** [~~for Technical Education~~] for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment.

(4) Applicants shall authorize test results to be forwarded to the Education Professional Standards Board.

Section 5. Applicants shall pay an examination fee directly to the testing agency for the required tests. The testing agency shall publish the examination fee with the publication of testing dates.

Section 6. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

All retakes shall meet the regularly scheduled testing dates. Initial certification shall not be granted until acceptable scores are achieved in each of the required areas.

Section 7. Assessment Recency. (1) An [~~Beginning September 1, 2003, an~~] applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.

(2) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.

(3) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the test administration date.

(4)(a) A teacher shall complete application for certification to the Education Professional Standards Board within the five (5) year validity period of the test and the passing score.

(b) A teacher who fails to complete application for certification to the Education Professional Standard Board within the five (5) year validity period of the test and the passing score shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(5) The test administration date shall be established by the National Occupational Competency Testing Institute or other authorized test administrator.

Section 8. The Education Professional Standards Board in conjunction with the Department of Workforce Investment [~~for Technical Education~~] shall collect data and conduct analyses of the impact of these tests as to permit a review of these administrative regulations on a regular basis.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 4060, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS 156.101, 161.028, 161.030, 161.048, 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161 030, 161.1222

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. [~~KRS 161.1222(1) authorizes the Education Professional Standards Board to implement a pilot internship project.~~] This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program [~~and the Kentucky Teacher Internship Pilot Project~~].

Section 1. Definitions. (1) "Half-time basis" means teaching fifteen (15) hours per week in the intern's area of certification.

(2) "Instructional day" means a day that:

(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and

(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time.

(3) "Resource Teacher Time Sheet" means a copy of the document of the same name that is contained on the Education Professional Standards Board (EPSB) Web site, www.kyepsb.net and in the publication, "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."

(4) "Teacher intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation and in "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants".

(2) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:

(a) A systematic observation of classroom performance;

(b) An ongoing review of documented evidence developed by the intern of progress toward demonstration of the applicable standards [~~portfolio materials or pilot project Teacher [Work Sample] that shall be developed by the teacher intern~~]; and

(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the New Teacher Standards for Preparation and Certification established by the Education Professional Standards Board in 16 KAR 1.010. Interns and their committees utilizing the new Teacher Performance Assessment shall use the benchmarks for each standard as outlined in the Teacher Performance Assessment Handbook.

(4) For interns and committees utilizing the new Teacher Performance Assessment, the intern shall [~~also~~] demonstrate a Leadership Standard. Scoring [~~However, scoring~~] for the Leadership Standard shall not apply to a determination of the intern's success or failure of the internship.

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) School districts shall maintain a pool of resource teachers and principals who have successfully completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.095 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.

(4) Representatives of the teacher training institutions [~~institution~~] shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than October 1 for the fall semester and February 15 for the spring semester. If the teacher intern is employed after the date required for appointment of the teacher educator, the teacher training institution shall appoint a teacher educator no later than

ten (10) days after being notified by the district of the need for a teacher educator.

(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or leader [~~head of~~] shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:

(a) The facts and circumstances that form the basis for removal for cause; and

(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 instructional days of employment in a certified position in the intern's area of certification for which the teacher intern receives compensation during one (1) school year; or

(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position in the intern's area of certification for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year. If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

(3)(a) The school district or nonpublic school shall complete and submit to the Education Professional Standards Board the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable[~~. The Confirmation of Employment shall be completed for each teacher intern and submitted to the Education Professional Standards Board~~]:

1. On or before October 15 for a teacher intern participating in the internship for the fall semester; or

2. On or before February 15 for a teacher intern participating in the internship for the spring semester.

(b) If the teacher intern begins employment after the dates established for submission of the Confirmation of Employment in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable within ten (10) days of the date of hire. A one (1) year internship certificate shall be issued in accordance with the provisions of 16 KAR 2:010 and 16 KAR 4:050.

(c) If the district fails to report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

(d) Failure to submit [~~return~~] the completed Confirmation of Employment or declare an emergency in accordance with paragraph (a)[~~,~~] [~~or~~] (b), or (c) of this subsection shall:

1. Be a violation of KRS 161.020; and

2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern is teaching on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(6) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board. The request shall include the following:

(a) The type of students that attend the alternative school, classroom or program;

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district or nonpublic school;

(d) The degree of administrative support within the program, classroom or school;

(e) The location and facility that houses the program, classroom or school;

(f) The instructional resources [~~that are~~] available to the faculty;

(g) The curriculum used by the program, classroom or school;

(h) The manner in which the program, classroom or school collaborates with other schools within the district;

(i) The current faculty and staff positions assigned to the program, classroom or school;

(j) A brief description of how a teacher intern placed in the alternative program, classroom or school could demonstrate that the teacher intern has met all of the applicable [~~new teacher~~] standards[~~.~~];

(k) Contact information for an individual who could provide additional information about the request; and

(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that the level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting.

(8) If the waiver is granted, it shall remain in effect for the duration of the internship [~~calendar year during which it is granted~~].

Section 5. Designation and Duties of Chair; Responsibilities of Resource Teacher, Teacher Intern, and Teacher Educator; Requirements for Timing and Content of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee as required by this administrative regulation. All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable. In addition,

the chair shall:

(a)1. Make three (3) official observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a postobservation conference after each observation;

(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(d) Monitor the time that the resource teacher spends with the teacher intern both in and out of class and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable; and

(e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern's progress in the internship.

(a) The resource teacher, upon completion of Kentucky Teacher Internship Program Committee Training and upon appointment, shall begin to assist the teacher intern.

(b) The resource teacher shall spend a minimum of twenty (20) hours working with the teacher intern in the classroom setting.

1. As a portion of the twenty (20) hours, the resource teacher shall conduct:

a. Three (3) official observations with each observation lasting one (1) hour in duration or one (1) class period; or

b. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons.

2. The observations shall be preceded by a preobservation conference and lesson plan review and shall be concluded with a postobservation conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete at least fifty (50) hours of out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:

1. Assist the teacher intern in the development of the professional growth plan;

2. Assist the teacher intern in areas identified in the professional growth plan;

3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;

4. Arrange activities for the teacher intern such as attendance at seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;

5. Continually assess the teacher intern's progress in the internship in relation to each of the new teacher standards; and

6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable. This document is located within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," incorporated by reference.

(d) The resource teacher shall divide the consultation time required in paragraph (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the semester. The resource teacher shall not spend this required consultation time with the teacher intern at required in school or district-wide meetings, or any other activity for which the resource teacher receives compensation from the district or employing school, to include a professional development activity.

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the new teacher standards;

(b) Attend the orientation, preobservation and postobservation conferences with individual committee members, and all beginning teacher committee meetings;

(c) Participate with the resource teacher in the fifty (50) hours of consultation time to be spent outside of an instructional setting;

(d) Cooperate with the resource teacher in completing the twenty (20) hours of instructional observation;

(e) Complete a professional growth plan (PGP);

(f) Prepare for three (3) official one (1) hour observations by each committee member during the year, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;

(g) Develop documentary evidence of progress toward demonstration of the applicable standards [~~a portfolio or Pilot Project Teacher Work Sample~~] for presentation and review at committee meetings; and

(h) Review all electronic documents completed by the beginning teacher committee and affix an electronic signature If [~~where~~] required. If the electronic version of the documents are unavailable through the electronic reporting system, the teacher intern shall review and sign hard copy versions of these documents.

(4) The teacher educator shall:

(a)1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation; and

(c) Report progress observed and concerns to the committee at the scheduled committee meetings. [;]

(5) Observations and committee meetings shall be scheduled in accordance with the following:

(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;

(b) The second meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting and shall have been preceded by classroom observations by all committee members;

(c) The third meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting and shall have been preceded by a second set of classroom observations by all committee members; and

(d) The fourth meeting shall be held between 111 and 140 instructional days following the orientation meeting and shall have been preceded by a third set of classroom observations by all committee members.

(6) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (5) [~~(4)~~] of this section for the full-year teacher interns but which shall span the spring and fall semesters of two (2) school years.

(7)(a) Classroom observations conducted by committee members shall be:

1. Of at least one (1) hour or one (1) class period in duration; and

2. In the classroom or at the work station of the teacher intern.

(b) Additional classroom observations may be conducted at the option of the committee.

(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

(8) All members of the committee shall attend all four (4) meetings of the committee.

(9) At the orientation meeting of the beginning teacher committee, the following items shall be addressed:

(a) Expectations on the part of the teacher intern and each committee member;

(b) Procedures and materials for classroom observations;

(c) Use of classroom observation data in designing the teacher intern's professional growth plan;

(d) Requirements for the teacher intern for compiling documentary evidence of progress toward demonstration of the appli-

cable standards [~~portfolio or Pilot Project Teacher Work Sample~~];

(e) General schedule for the events to take place during the internship program; and

(f) Work of the resource teacher with the teacher intern.

(10)(a) The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the teacher intern's documented evidence of progress toward demonstration of the applicable standards [~~portfolio or Pilot Project Teacher Work Sample~~], and reports of the resource teacher that shall support the growth of the teacher intern.

(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern's progress in the internship in relation to each of the new teacher standards.

(11) The Professional Growth Plan (PGP) shall be initiated at the second committee meeting.

(12) The third meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the PGP.

(13) The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of all new teacher standards.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions.

(1)(a) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board by May 1 or no later than two (2) weeks following the final committee meeting, whichever occurs first.

(b) For midyear teacher interns completing the internship in December, the final report shall be submitted by December 15.

(c) The final report shall be accompanied by the resource teacher time sheets.

(2) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. If the teacher intern does not successfully complete the internship during the period of validity of the statement of eligibility, the teacher intern shall requalify for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.

(3)(a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the EPSB through the electronic system, or by hard copy if the electronic system is unavailable within ten (10) days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the EPSB, the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:

1. Serious medical conditions;
2. Temporary disability; or
3. Military deployment.

(c) The provisions of Section 4 of this administrative regulation shall not apply in this situation.

Section 7. Payments to Committee Members. (1) In accordance with the budgetary act, the Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for:

(a) The direct service of a resource teacher to each teacher intern;

(b) Participation in classroom observations and committee meetings; and

(c) The employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the teacher intern during normal working hours.

(2) A resource teacher shall:

(a) Not serve as a resource teacher for more than one (1) teacher intern concurrently; and

(b) Be paid a stipend in accordance with subsection (3) of this section

(3)(a) Except as provided by paragraphs (b) and (c) of this subsection, the stipend shall be:

1. $1,400 for a year of service, and

2. Disbursed in accordance with KRS 161.030(6)(f) on a biannual basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns with payment being disbursed at the end of the one (1) year internship.

a. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district.

b. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.

(b) If the school or school district where the internship takes place fails to submit the time sheets by the date stipulated in Section 6(1) of this administrative regulation, the Education Professional Standards Board staff shall refuse payment of the stipend.

(c) The stipend shall be prorated if the required number of hours are not performed and documented in legitimate and appropriate pursuit of successful completion of the internship pursuant to the requirements of Section 5(2) of this administrative regulation.

Section 8. Use of the New Teacher Performance Assessment by Internship Participants [~~Participation in the Kentucky Teacher Internship Pilot Project~~]. (1) Beginning with the 2006-07 school year, and for full-year interns beginning the Fall of 2007, [~~As an alternative to participation in the one (1) year Kentucky Teacher Internship Program,~~] a school or district [~~teacher intern~~] may [~~elect to~~] require all interns employed to use the new Teacher Performance Assessment in lieu of the traditional internship assessments [~~that were~~] contained within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."

(2) Beginning January 1, 2008, all school districts and all nonpublic schools participating in the Kentucky Teacher Internship Program shall use the new Teacher Performance Assessment with all interns beginning their internship in lieu of the traditional internship assessments [~~that were~~] contained within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants"

(3) [~~participate in the one (1) year Kentucky Teacher Internship Pilot Project authorized by KRS 161.1222~~].

[~~(2) Application for the pilot project shall be made by completing the KTIP Pilot Project Application Form or its online equivalent found on the Education Professional Standards Board website at www.kyepsb.net and submitting it to the Education Professional Standards Board. As a prerequisite to participation, the applicant shall have:~~

~~(a) A bona fide offer of employment;~~

~~(b) Approval for pilot project participation by the district superintendent or designated nonpublic school head or leader;~~

~~(c) Approval for pilot project participation by the principal or designated nonpublic school head or leader; and~~

~~(d) A resource teacher assigned in accordance with the provisions of this administrative regulation and KRS 161.030.~~

~~(3) The Education Professional Standards Board shall select participants based upon a representative sample, taking into consideration the following criteria:~~

~~(a) Geographic location of the internship;~~

~~(b) The teacher training institution from which the applicant graduated;~~

~~(c) The grade level to be taught by the applicant;~~

~~(d) The content area to be taught by the applicant; and~~

~~(e) The route by which the applicant sought certification, traditional or alternative.~~

~~(4) Incentives for pilot project participants shall include the following:~~

~~(a) Opportunities for the teacher intern to observe experienced~~

~~teachers;~~

~~(b) Online training modules for creating the Teacher Work Sample; and~~

~~(c) The development and use of the Teacher Work Sample in lieu of the traditional internship portfolio.~~

~~(5) An individual serving as a resource teacher to a pilot project participant shall be paid in accordance with the provisions of Section 7 of this administrative regulation.~~

~~(6) For an individual who has completed service as a pilot project mentor between December 1, 2003 and August 29, 2005, and received a $1000 stipend, the mentor shall receive an additional $400. The EPSB shall forward the supplemental $400 to the mentor after the effective date of this administrative regulation.~~

~~(7) For an individual who has completed service as a pilot project mentor between December 1, 2003 and August 29, 2005, and received a $1000 stipend, the mentor shall receive an additional $800 if, at the time of appointment as a mentor to a pilot project intern, the teacher had attained certification by National Board for Professional Teaching Standards. The EPSB shall forward the supplemental $800 to the mentor after August 29, 2005.~~

~~(8)~~] Prior to serving as a member of the beginning teacher [~~teaching~~] committee for a teacher [an] intern using the new Teacher Performance Assessment [~~the pilot project~~], the principal, resource teacher, and teacher educator each shall have completed the new Teacher Performance Assessment Internship committee [~~Work Sample Committee~~] training

(4) [~~(9)~~] During the year of the [~~pilot project~~] internship using the new Teacher Performance Assessment, the teacher intern and the beginning teacher committee shall utilize the Kentucky Internship Program scoring rubrics and forms contained within the Kentucky Teacher Internship Program Teacher Performance Assessment Handbook [~~Work Sample Guide~~], incorporated by reference.

(5) [~~(10) An interim in the pilot project shall be required to prepare for and complete for the [pilot project committee members three (3) official observations with each lasting one (1) hour or one (1) class period in duration. One (1) of the official observations shall be of a videotaped classroom lesson prepared by the intern and lasting one (1) hour or one (1) class period in duration.~~

~~(11)~~] To the extent that they do not conflict with this section, all other provisions of this administrative regulation shall apply to the intern using the new Teacher Performance Assessment [~~internship pilot project~~].

(6) [~~(12)~~] Participation in the Kentucky Teacher Internship Program using the new [~~using new The~~] Teacher Performance Assessment [~~Pilot Project~~] shall not alter any rights ordinarily afforded to teacher interns or employing schools or school districts under the Kentucky Teacher Internship Program. Use of the new Teacher Performance Assessment shall not form a basis for appeal of a teacher [an] intern's failure of the Kentucky Teacher Internship Program.

Section 9. Appeals. (1)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. One (1) teacher;
2. One (1) principal,
3. One (1) teacher educator; and
4. The Executive Director of the Education Professional Standards Board, or his or her designee.

(b) The committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.

(c) An appeals committee member shall not take part in a decision in which the member has an interest or is biased.

(2)(a) The teacher intern shall file the appeal within thirty (30) calendar days of the date the written notice of failure of the internship is received by the teacher intern by certified mail return receipt requested. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the appeal shall be filed within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address.

(b) Upon receipt of the appeal, the Education Professional Standards Board shall send a copy to the members of the beginning teacher committee. Each member may file a written response within fifteen (15) days of receipt.

(3)(a) The appeals committee shall review the written appeal by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall base its recommendation upon the following requirements:

1. Evidence of the teacher intern's ability to meet the requirements of the new teacher standards;
2. Appropriate documentation of at least twenty (20) hours in the instructional setting and fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
3. Assignment of beginning teacher committee members in accordance with legal requirements;
4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and
5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.

(5) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.

(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:

(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or

(b) The period of validity of the statement of eligibility has expired.

(7) If, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.

(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is received by the teacher intern.

(9) In notifying the teacher intern of the board's decision, the Education Professional Standards Board shall send the decision of the board **by certified mail** to the last known address of the teacher intern. If the teacher intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail when presented, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board's decision is mailed to the teacher intern by certified mail.

Section 10. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 11. An intern serving the internship in Interdisciplinary Early Childhood Education (IECE) **shall** [~~must~~] successfully demonstrate the new teacher standards as adapted to the IECE stan-

dards and shall utilize the IECE Observation Instrument incorporated by reference.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," March 2005 edition;

(b) "Statement of Eligibility/Confirmation of Employment form," revised November 2004;

(c) [~~"KTIP Pilot Project Application Form", June 2003 edition; (d)~~] "Kentucky Teacher Internship Program Teacher Performance Assessment Handbook[~~Pilot Project Teacher Work Sample Guide~~]", June 2006 [~~August 2005~~] edition[~~"~~],

(d) KTIP TPA Intern Performance Record, June 2006 edition

[~~(e) "KTIP Pilot Project Intern Performance Record, August 2005 edition"~~]; and

(e) [~~(f)~~] "IECE Observation Instrument", January 2005 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p m.

TOM STULL, Chairperson

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 11, 2006 at 3 p m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, October 10, 2006)

16 KAR 9:040. Part-time adjunct instructor certificate.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030, 161.046, 161.048(5), 161.120

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030, 161.046(2), 161.048(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.046 and 161.048(5) establish the position of adjunct instructor and require the Education Professional Standards Board to promulgate administrative regulations to establish certification requirements. This administrative regulation establishes the minimum requirements for an adjunct instructor certificate.

Section 1. Definition. "Exceptional life or work experience candidate" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally-accepted standards in the area in which certification is sought.

Section 2. Candidate Eligibility Requirements. (1) An adjunct instructor shall meet the requirements for good moral character as required in KRS 161.120 and the following requirements relating to educational and occupational experience:

(a) An adjunct instructor employed in middle school or secondary school shall hold:

1. A bachelor's degree from a regionally accredited institution with:

a.(i) A cumulative minimum grade point average of 2.50 on a 4.00 scale; or

(ii) A minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in the specialty subject to be taught; or

2. A master's degree in the specialty subject to be taught from a regionally-accredited institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(b) An adjunct instructor in elementary school or early childhood education program shall hold:

1. A bachelor's degree from a regionally-accredited institution with:

a.(i) A cumulative minimum grade point average of 2.50 on a 4.0 scale; or

(ii) A minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in a planned program of child development or a related area; or

2. A master's degree in a planned program of child development or a related area from a regionally accredited institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(c) An adjunct instructor for occupation-based career and technical education [~~industrial education~~] shall:

1. Be a high school graduate; [~~and~~]

2. Have at least four (4) years of appropriate occupational experience for the [~~industrial education~~] specialty to be taught; and

3.a. Complete the specialty area examination prerequisite as identified in 16 KAR 6:020; or

b. Hold either an associate degree or technical diploma in a related area.

(2)(a) An applicant for adjunct instructor certification who does not meet the minimum academic preparation requirements established in subsection (1) of this section may apply for this certificate as an exceptional life or work experience candidate.

(b) An exceptional life or work experience candidate shall be recommended by the employing school district and complete the application process established in subsection (3) of this section.

(c) An exceptional life or work experience candidate shall include the following information as verification of exceptional qualifications in the field of endeavor to be taught or service to be practiced:

1. Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is an [~~one who has~~] exceptional life or work experience candidate as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the New Teacher Standards established in 16 KAR 1:010;

2. Documentation of achievement that may include academic and nonacademic preparation, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field or endeavor; and

3. Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional life or work experience in this field.

(3) Form TC-25 signed by the local district superintendent and approved by the local board of education shall be submitted to the Education Professional Standards Board for each adjunct instructor. The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any exceptional competencies or experiences submitted in support of the application. Upon receipt of the application and appropriate documentation, a candidate meeting all of the requirements shall be issued a one (1) year adjunct instructor certificate.

Section 3. Orientation Program. Each local board of education shall provide for an orientation program for the adjunct instructors employed within the district. A detailed description of the orientation program shall be a part of the certificate application form. The orientation program shall include an emphasis on student safety, district policies and procedures, and pedagogical assistance commensurate with the New Teacher Standards established in 16 KAR 1:010.

Section 4. Incorporation by Reference. (1) "Form TC-25", revised 8/99, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a m. to 4.30 p m.

TOM STULL, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 11, 2006 at 3 p.m.
CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, October 10, 2006)

103 KAR 8:110. Apportioned vehicles.

RELATES TO: KRS 132.487
STATUTORY AUTHORITY: KRS 131.130, 132.487, 136.188(2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 136.188(2)(a) enacted by the 2006 GA requires the Department of Revenue to promulgate an administrative regulation designating an authoritative source of depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1). This administrative regulation establishes the authoritative source of depreciation values for determining the annual fee on apportioned motor vehicles.

Section 1. Effective January 1, 2007, the publication titled "Marshall Valuation Service" from Marshall & Swift/Boeckh, LLC, shall be the designated authoritative source of vehicle depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).

Section 2. Incorporation by Reference. (1) "Marshall Valuation Service", Marshall & Swift/Boeckh, LLC, 2006 edition, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN FARRIS, Secretary
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 at 11 a.m.
CONTACT PERSON: Beth A. Brosmore, Executive Director, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Station 30, Frankfort, Kentucky 40620, phone (502) 564-8338, fax (502) 564-8192.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(As Amended at ARRS, October 10, 2006)

201 KAR 8:150. Dental application; examination.

RELATES TO: KRS 313.040
STATUTORY AUTHORITY: KRS 313.220
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220 requires the board to conduct the examinations of all applicants for a license and authorizes the board to promulgate administrative regulations relating to the practice of dentistry. This administrative regulation establishes the guidelines for filing the application form for licensure with the Board of Dentistry and establishes the guidelines for the examination for licensure.

Section 1. (1) The "Application to Practice Dentistry" [~~application form for general practice of dentistry shall~~] be filled out in its entirety by each applicant for the general practice of dentistry. The application form shall be executed and sworn to before a notary and returned to the Kentucky Board of Dentistry. The board shall reject any application that does not comply with the requirements of all applicable administrative regulations from 201 KAR Chapter 8 and KRS Chapter 313.
(2) The examination shall consist of two (2) parts:
(a) A written examination in accordance with 201 KAR 8:185; and
(b) A clinical examination in accordance with 201 KAR 8:220.
(3) A passport-sized photograph of the applicant's head and shoulders taken within six (6) months prior to the application date shall be attached to the application form. [~~a written examination, and a clinical examination~~].

Section 2. Incorporation by Reference. (1) The "Application to Practice Dentistry" form, October [~~April~~] 2006 [~~May 1996~~] edition, Kentucky Board of Dentistry, is incorporated by reference.
(2) This material [~~is~~] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID NARRAMORE, Vice President
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 18, 2006 at 11 a.m.
CONTACT PERSON: Eric T. Clark, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(As Amended at ARRS, October 13, 2006)

201 KAR 8:260. Dental hygiene application; examination.

RELATES TO: KRS 313.300
STATUTORY AUTHORITY: KRS 313.270
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.270 authorizes the board to promulgate administrative regulations relating to the practice of dental hygiene. KRS 313.300 requires written applications to the board in order to practice dental hygiene. This administrative regulation establishes the guidelines for filing the application form for licensure in dental hygiene and establishes the guidelines for the examination for licensure.

Section 1. (1) The "Application to Practice Dental Hygiene" application form for the practice of dental hygiene shall be filled out in its entirety by each applicant for the practice of dental hygiene. The application form shall be executed and sworn to before a notary and returned to the Kentucky Board of Dentistry. The board shall reject any application that does not comply with the requirements of all applicable administrative regulations from 201 KAR Chapter 8 and KRS Chapter 313.
(2) The examination for licensure shall consist of two (2) parts:
(a) A written examination in accordance with 201 KAR 8:277; and
(b) A clinical examination in accordance with 201 KAR 8:277.
(3) A passport-sized photograph of the applicant's head and shoulders taken within six (6) months prior to the application date shall be attached to the application form. [~~a written examination, and a clinical examination.~~]

Section 2. Incorporation by Reference. (1) The "Application to Practice Dental Hygiene" form, October [~~April~~] 2006 [~~May 1996~~] edition, Kentucky Board of Dentistry, is incorporated by reference.
(2) This material [~~is~~] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID NARRAMORE, Vice President
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 18, 2006 at 11 a.m.
CONTACT PERSON: Eric T. Clark, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(As Amended at ARRS, October 10, 2006)

201 KAR 18:192. Continuing professional development.

RELATES TO: KRS 322.290(15) [(14)]
STATUTORY AUTHORITY: KRS 322.290(4), (15) [(14)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) [(14)] requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(15) [(14)] for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar (e.g., passing a university course or attending a seminar).

(2) "Continuing professional development" (CPD) means participation in activities, beyond the basic educational requirements, that:

(a) Provide [provide] specific content planned and evaluated to improve the land surveyor's professional competence;

(b) [and (a)] Encourage acquisition of new skills and knowledge required to maintain competence; [and]

(c) [(b)] Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) [and (c)] Raise the ethical standards within the professional community; and

(e) [(d)] Which meet the requirements established by the provisions of this administrative regulation.

(3) "CPDC" ["CPC"] means the Continuing Professional Development Committee.

(4) "Professional development hour" (PDH) means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation or group who has developed a CPD activity and participates[. The provider or its designated representative must participate] directly in the presentation.

(6) ["Reporting period" means the two (2) calendar year period immediately before the professional land surveyor's licensure renewal.

(7)] "Sponsor" means a group, such as a professional society, offering activities by providers.

Section 2. Continuing Professional Development Committee. (1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair [at the first regularly scheduled meeting of the board every calendar year].

(2) The CPDC shall consist of [at least] four (4) board of licensure members of which at least two (2) [members] are professional land surveyors. In addition, the Kentucky Association of Professional Surveyors and the Kentucky Society of Professional Engineers shall each appoint one (1) nonvoting member [members of the Kentucky Association of Professional Surveyors. The CPDC shall include at least two (2) members of the board who are professional land surveyors].

(3) Work of the CPDC shall be considered work of the board and compensation shall be given as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings and a record of its action shall be maintained.

(5) The CPDC shall have the authority to rule on all matters concerning continuing professional development for professional land surveyors. Decisions of the CPDC shall be ratified by the board. A licensee [Anyone] who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at the board's next meeting.

Section 3. Program Structure. (1) Except as provided otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year.

(2) The requirement for [eight (8)] professional development hours shall include a four (4) hour board sponsored course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. In the year that this course is taken, it shall count as four (4) of the required eight (8) hours. [before the end of four (4) calendar years from previous attendance.] [+

(a) A course in professional ethics which shall be:

1. Approved by the CPDC as meeting the ethics requirement;

2. Taken in accordance with Section 4 of this administrative regulation;

3. Taken once before the end of four (4) calendar years from previous attendance.

(b) A course in standards of practice for professional land surveyors which shall be:

1. Sponsored by the board;

2. Taken in accordance with Section 4 of this administrative regulation;

3. Taken once before the end of four (4) calendar years from previous attendance.]

(3) [(2)] A maximum of four (4) hours in excess of the eight (8) professional development hours required to be earned in a calendar year may be carried forward to the next calendar year.

(4) [(3)] Failure to earn the eight (8) professional development hours shall make the licensee ineligible for licensure renewal [constitute unprofessional conduct].

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:

(a) College or university courses;
(b) Seminars;
(c) Tutorials;
(d) In-house programs sponsored by corporations or other organizations;
(e) Correspondence courses;
(f) Televised or videotaped courses with approved supervision;
(g) Distance learning courses with approved supervision;
(h) Teaching or instructing courses, programs, or items specified in this subsection. The credit may be claimed at twice the number of hours permitted participants;
(i) Making or attending approved presentations at technical or professional meetings; or
(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:
(a) Be relevant to the practice of land surveying;
(b) Contain technical, ethical, or managerial subjects;
(c) Be an organized program of learning, presented sequentially;
(d) Be conducted by individuals with education, training, or expertise acceptable to the CPDC;
(e) Be offered for the number of professional development hours approved by the CPDC; and
(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(4) Professional development hours shall be converted as follows.

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.

(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors as follows:

(1) Approval of activities is valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors without a conspicuous notice that the activity has been "submitted for consideration."

(4) If prior approval is desired, a written request for approval of the activity shall be submitted to the CPDC on "Continuing Professional Development Course Approval Form" at least sixty (60) days prior to presentation of the activity. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval.

(5) All requests for approval of an activity shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) Handouts or reference materials needed to evaluate the activity; and

(d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity:

(a) The provider or sponsor shall waive all fees for the CPDC or board representative; and

(b) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall be prohibited from presenting a CPD activity for credit without specific approval from the board.

(9) When a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request to the CPDC and including the items listed in subsection (5) of this section.

(10) Upon approval, an activity **shall** [~~will~~] receive a CPD number which shall be used to identify the activity.

(11) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for ratification.

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempted for the calendar year in which he **or she** is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension is only valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board, a former professional land surveyor shall earn the continuing professional development hours required for each year **the** [~~his~~] license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. **(1) On the biennial renewal form, a professional land surveyor shall certify whether or not the requirements of this administrative regulation have been met.**

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation. [~~By January 15 following each reporting year, every professional land surveyor shall report, in writing to the board, the CPD programs attended and the corresponding professional development hours earned. This report shall be certified and signed by the professional land surveyor. Reports filed after January 15, shall be accompanied by a $100 late fee and shall be subject to an audit.~~]

Section 9. Audits. (1) Compliance with the annual CPD requirements shall be determined through an audit process.

(2) Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board. **(3)** Individuals selected for audit shall provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation.

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(4) [~~(2)~~] Verification records and documentation for audit purposes shall be maintained by individual licensees for a period of three (3) years after completion of the CPD activity.

(5) [~~(3)~~] If [~~the board disallows~~] continuing professional development credit **is disallowed,** [~~pursuant to an audit~~] a professional land surveyor shall **have 180 calendar days after notification to substantiate the original claim or earn other credit to meet the requirement.** [~~before June 1 following the reporting period:~~

~~(a) Substantiate the disallowed continuing professional development credit, or~~

~~(b) Earn sufficient hours to meet the CPD requirement.~~]

(4) Failure to comply with the CPD requirements shall **be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.**

(5) An audit resulting in a determination of noncompliance shall subject the professional land surveyor to an automatic audit the next reporting period and each subsequent reporting period until a audit results in a determination of compliance.

(6) A professional land surveyor who is under investigation pursuant to KRS 322.190 may be subjected to the audit requirements of this section [~~result in non-renewal of the professional land surveyor's license without a hearing~~].

Section 10. Incorporation by Reference. (1) "Continuing Professional Development Course Approval Form", (November, 1999), State Board of Licensure for Professional Engineers and Land Surveyors is incorporated by reference.

(2) **This material** [~~It~~] may be inspected, copied, or obtained, **subject to applicable copyright law,** at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 14, 2006

FILED WITH LRC: August 15, 2006 at 11 a.m.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, October 10, 2006)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041(1), (2), 314.051(3), 314.470

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 Territonal 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. 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;

4. A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20.370, Section 1(3); and

5. 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 Kentucky Program of Nursing Graduates" as established in 201 KAR 20:260, the "Certified List of Out-of-state Program of Nursing Graduates", or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The "Certified List of Out-of-state Program of Nursing Graduates" shall be submitted by the nurse administrator of the out-of-state program of nursing.

(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 approval by the board, the board shall reissue the provisional license for six (6) months.

(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(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) Except as provided in subsections (b) and (c) of this section, 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.

(c) An applicant who has failed the NCLEX as a result of an application for licensure in a jurisdiction other than Kentucky shall take and pass the examination before completing the clinical internship.

(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. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicate on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of his state of residence.

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

(a) "Certified List of Kentucky Program of Nursing Graduates", (2/06), Kentucky Board of Nursing;

(b) "Petition to Hold Provisional License in Abeyance," (8/04), Kentucky Board of Nursing; and

(c) "Certified List of Out of State Program of Nursing Graduates", (2/06), 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.

SUSAN DAVIS, President

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 14, 2006 at 11 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, October 10, 2006)

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, 314.470

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, 314 041(7), and 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)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that would be equivalent to a Kentucky program of nursing;

(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) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report each disciplinary action taken or pending on a license by another jurisdiction;

(f) 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);

(g) 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.a. Name of the program of nursing completed and date of graduation, or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; 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;

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI; and

(j) Submit evidence of completion of the clinical internship as required by KRS 314.041, 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 appli-

cant 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) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; 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 (f) and (i) 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 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), (b), (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. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of his state of residence.

Section 8. 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.

SUSAN DAVIS, President

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC: August 14, 2006 at 11 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, October 10, 2006)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS 314.011(13), 314.031, 314.071(4),

314.091, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.191(1) establishes the standards for disciplinary action to be taken by the board for practices which violate the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, 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 individual [~~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, except as provided by KRS 314.470. 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. In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(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.

(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 individual [~~applicant or licensee~~] for denial 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 the individual [~~applicant or licensee~~], including 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 individual [~~applicant or licensee~~].

(c) The agreed order when approved by the board shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091 and the matter resolved as directed therein.

(5) Consent decree.

(a) If an individual [~~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 and other terms and conditions as listed in Section 4 of this administrative regulation against an individual [~~a licensee or applicant~~] who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current[~~, active~~] license or provisional 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.

5. [~~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.

6. Had a positive drug screen for a nonprescribed drug or illicit substance and obtained a chemical dependency evaluation that does not indicate a substance abuse diagnosis.

(b) The use of a consent decree shall be restricted to only those individuals [~~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 individual [~~applicant or licensee~~] meets all requirements for licensure or registration upon ratification of the consent decree by the board [~~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 the 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, holder of a multistate licensure privilege, or [~~limited~~] license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of any medication; supervisory functions; or any act which the individual [~~licensee or applicant~~] cannot safely perform.

(2) Requiring the individual [applicant or licensee] have continuous, direct, on-site supervision by a registered nurse, physician, or dentist.

(3) Specifying the individual's [applicant's or licensee's] practice setting.

(4) Specifying the types of patients to whom the individual [applicant or licensee] may give nursing care.

(5) Requiring the individual [applicant or licensee] to notify the board in writing of any change in name, address, or employment.

(6) Requiring the individual [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 individual [applicant or licensee] to submit to the board evidence of physical, chemical dependency, 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.

(10) Requiring the individual to notify the board in writing of any criminal arrests, charges, or convictions.

[(11) Other requirements as determined by the board.]

[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.]

SUSAN DAVIS, President

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC; August 14, 2006 at 11 a.m.

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.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, October 10, 2006)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 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. This administrative regulation establishes standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Faculty for Prelicensure Registered Nurse Programs. (1)(a) The faculty shall include a nurse administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as nurse administrator). The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number and composition to assess, plan, implement, and evaluate the program and its curriculum in relation to the stated purpose, philosophy, objectives, and number of students and classes admitted annually, and any additional extension, experimental, or continuing education programs conducted.

(b) The nurse administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(2) The nurse administrator shall have the following qualifications:

(a) A minimum of a masters or higher degree in nursing [if appointed after September 1, 1980].

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and experience in administration.

(c) Current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(3)(a) Newly appointed nurse faculty in a baccalaureate degree prelicensure registered nurse program shall hold:

1. A masters degree with a major in nursing; or

2. A baccalaureate degree with a major in nursing and a masters degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related masters degree.

(b) Nurse faculty in an associate degree prelicensure registered nurse program shall hold:

1. A masters degree with a major in nursing;

2. A baccalaureate degree with a major in nursing and a masters degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related masters degree, or

3. A baccalaureate degree with a major in nursing, and the nurse faculty member shall complete within five (5) years of hire a masters degree commensurate with either subparagraph 1 or 2 of this paragraph.

(c) The nurse faculty in all educational programs whose faculty prepares students for licensure as registered nurses shall hold a temporary work permit or a current license or privilege to practice as a registered nurse in the Commonwealth of Kentucky.

(d) The nurse faculty in all educational programs whose faculty prepares students for licensure as registered nurses shall have experience in the clinical or functional area of responsibility with a minimum of two (2) years experience as a registered nurse within the immediate past five (5) years or successful completion of a competency based reentry program acceptable to the board.

(e) The nurse faculty in all educational programs whose faculty prepares students for licensure as registered nurses shall have experience in the application of principles in teaching and learning

Section 2. Faculty for Prelicensure Practical Nurse Programs. (1)(a) The faculty shall include [but not be limited to] a nurse administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as nurse administrator). The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number and composition to assess, plan, implement, and evaluate the program and its curriculum in relation to the stated purpose, philosophy, objectives, and number of students and classes admitted annually.

(b) The nurse administrator, the nurse faculty and the clinical instructor shall be appointed by and be responsible to the governing institution of the programs of nursing.

(2) The nurse administrator shall have the following qualifications:

(a) A baccalaureate or higher degree with a major in nursing [if appointed after July 1, 1980].

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with experience in administration.

(c) Current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(3)(a) [Nurse faculty employed after September 1, 1985 shall have earned a minimum of a baccalaureate degree by January 1, 1992.

(b)] Nurse faculty appointed after January 1, 1992 shall have a minimum of a baccalaureate degree with a major in nursing

(b) [(c)] Nurse faculty shall hold a current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(c) [(d)] Nurse faculty shall have experience in the clinical or functional area of responsibility with a minimum of two (2) years of experience as a registered nurse within the immediate past five (5) years or successful completion of a refresher course approved by the board pursuant to 201 KAR 20:380.

(d) [competency based reentry program acceptable to the board.

(e)] Nurse faculty shall have experience in the application of

principles in teaching and learning.

Section 3. Evaluation of Registered Nurse Program and Practical Nurse Program Faculty. (1) Evaluation of faculty records. The nurse administrator shall submit to the board the qualifications of nurse faculty and clinical instructors upon appointment.

(a) Official college transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing. If standards are not met, the governing institution shall be notified that a new student class may not be enrolled until standards are met. The [~~Further, the~~] program of nursing may also be subject to conditional approval status in accordance with 201 KAR 20:280, Section 2(2).

Section 4. Faculty Supervision of Student Clinical Practice. (1) Effective [~~September 1, 1993,~~] the maximum ratio of students to a nurse faculty member or clinical instructor in the clinical area shall be ten (10) to one (1).

(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(3) The educational preparation of the clinical instructor shall at least equal the level of the appointing program. Any exception shall be justified to the board.

SUSAN DAVIS, President

APPROVED BY AGENCY: August 10, 2006

FILED WITH LRC; August 14, 2006 at 11 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, October 10, 2006)

201 KAR 20:500. Nurse licensure compact.

RELATES TO: KRS 314.470

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.470 adopted the Nurse Licensure Compact. The compact requires the adoption of this administrative regulation.

Section 1. Definitions. (1) "Board" means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Information system" means the coordinated licensure information system.

(3) "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes or domicile.

(4) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

Section 2. Issuance of a License By a Compact Party State (1) Effective June 1, 2007, an applicant for initial licensure shall not [~~As of June 1, 2007, no applicant for initial licensure will~~] be issued a compact license granting a multistate privilege to practice, unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. That [~~Such~~] evidence shall include a declaration signed by the licensee The applicant shall also furnish one (1) of the following: [~~Further evidence that may be requested may include but is not limited to~~]

(a) Driver's license with a home address;

(b) Voter registration card displaying a home address; or

(c) Federal income tax return declaring the primary state of residence.

(3) A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days.

(4) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in subsection (3) of this section shall be stayed until resolution of the pending investigation.

(5) The former home state license shall no longer be valid upon the issuance of a new home state license.

(6) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state may take action in accordance with that state's laws and rules.

Section 3. Limitations on Multistate Licensure Privilege. (1) Home state boards shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement shall [~~will~~] agree to limit the licensee's practice to the home state during the pendency of the disciplinary order or agreement.

(2) This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and any [~~such~~] other party state boards.

Section 4. Information System. (1) Levels of access.

(a) The public shall have access to nurse licensure information limited to:

1. The nurse's name;

2. Jurisdiction or jurisdictions [~~"Jurisdiction(s)"~~] of licensure;

3. License expiration date or dates [~~date(s)~~];

4. Licensure classifications and statuses held [~~classification(s) and status(es)~~];

5. Public emergency and final disciplinary actions, as defined by contributing state authority; and

6. The status of multistate licensure privileges.

(b) Nonparty state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.

(c) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing nonparty state authority.

(2) The licensee may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates that [~~such~~] claim. The board shall verify and within ten (10) business days correct inaccurate data to the information system.

(3) The board shall report to the information system within ten (10) business days:

(a) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring, [~~(~~]except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority[~~)~~];

(b) Dismissal of complaint; and

(c) Changes in status of disciplinary action or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the information system within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the information system shall be completed within ten (10) business days upon notification by a board.

SUSAN DAVIS, President
APPROVED BY AGENCY: August 11, 2006
FILED WITH LRC: August 14, 2006 at 11 a m.
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.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, October 10, 2006)

201 KAR 22:140. Funding of impaired physical therapy practitioners committee.

RELATES TO: KRS 327.040(13), 327.045, 327.070(2)(a)
STATUTORY AUTHORITY: KRS 327.045(4)
NECESSITY, FUNCTION, and CONFORMITY: KRS 327.045(4) requires the board to promulgate an administrative regulation establishing the assessment fee to be collected by the board as part of the licensure and certification renewal application fee. This administrative regulation establishes the assessment fee.

Section 1. (1) An assessment fee of twenty (20) dollars shall be paid to the board by each credential holder;
(2) The assessment fee shall be waived for the biennial renewal period ending March 31, 2007; and
(3) The assessment fee shall be waived for reinstatement applications through December 31, 2008.

Section 2. [(2)] The **assessment** fee may be used for education, travel expenses and a per diem to committee members during the normal course of committee business as assigned by the program coordinator and the executive director.
(1) Travel expenses shall be in accordance with state travel administrative regulations.
(2) Each committee member shall be entitled to receive an honoranum of twenty-five (25) dollars for attending meetings required or approved by the board.

TROY GRUBB, P.T., Chair
APPROVED BY AGENCY: July 20, 2006
FILED WITH LRC: August 14, 2006 at 11 a m.
CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Licensure and Certification for Dietitians and Nutritionists
(As Amended at ARRS, October 10, 2006)

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

RELATES TO: KRS 310.041(1), 310.050(3)
STATUTORY AUTHORITY: KRS 310.041(1), 310.050(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050(3) requires completion of continuing education prior to the renewal of a license or certificate, and KRS 310.041(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for dietitians and nutritionists.

Section 1. (1)(a) The annual continuing education compliance period shall extend from November 1 of each year to October 31 of the next year.
(b) Prior to renewal of a license or certificate for the next licensure or certification period, a licensee or certificate holder shall have earned fifteen (15) hours of approved continuing education during the compliance period.
(c) A person who is either licensed as a dietitian or [and] certified as a nutritionist, or who is both a licensed dietitian and certified nutritionist, shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of a license or [his license and] certificate for the next licensure period.
(2) An initial licensee or certificate holder shall be exempt from the continuing education requirements for the first license or certification renewal.
(3) [Hours of continuing education credit may be obtained by attending and participating in a continuing education activity that has been approved by the board.
(4)] No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.
(4) [(5)] It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.
(5) [(6)] For purposes of the audit set forth in subsection (8) of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept shall include [includes the continuing professional education annual statement furnished by the Commission on Dietetic Registration or any of the following]:
(a) Certificates of attendance for the prior-approved continuing education;
(b) Transcripts for academic coursework;
(c) Reprints of journal articles published, or
(d) Proof of attendance, description of activity, and professional qualifications of the presenter for [out-of-state] continuing education activities.
(6) [(7)] Each licensee or certificate holder shall sign a statement on the renewal application form indicating compliance with the continuing education requirements. **A license or certificate shall not** [No license or certificate shall] be renewed without this sworn statement.
(7)[(8)](a) The board shall [may] audit at least fifteen (15) percent of licensees' [a licensee's] or certificate holders' [holder's] continuing education records each year.
(b) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board.
(c) Falsifying reports, records, or other documentation relating to continuing education requirements shall result in formal disciplinary action.

Section 2. Approved Continuing Education Activities. (1) [Obtaining continuing education.
(a)] Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar or lecture which has been approved by the board.
[(b) The board shall approve continuing education hours which have been approved by the Commission on Dietetic Registration of the American Dietetic Association.]
(2) Criteria for subject matter.
(a) Subject matter for continuing education hours shall reflect the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer.
(b) Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth.
(c) The following areas shall be deemed appropriate subject matter for continuing education credit if, in the judgment of the board, they are directly related to the practice of dietetics or nutrition:
1. Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's nutritional health;
2. Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting; or
3. Management or quality assurance of food and nutritional care delivery systems.
(3) Standards for approval of continuing education[,] programs and activities. A continuing education activity shall be approved

[~~qualified for approval~~] if the board determines that it:

(a) Constitutes an organized program of learning, including a workshop or symposium, which contributes directly to the professional competency of the licensee or certificate holder; [~~and~~]

(b) Pertains to subject matters which relate integrally to the practice of dietetics or nutrition; and

(c) Is conducted by individuals who have education, training and experience in the subject matter of the program.

(4) Academic coursework.

(a) Coursework shall be eligible for credit if it:

1. Has been completed at a U.S. regionally accredited college or university; and

2. Is beyond entry-level dietetics;

(b) One (1) academic semester credit shall equal fifteen (15) continuing education hours.

(c) One (1) academic quarter credit shall equal ten (10) continuing education hours.

(d) An audited class shall equal eight (8) continuing education hours for a semester or five (5) continuing education hours for a quarter.

(5) Scholarly publications. A publication may be approved if it is [~~Publications may be approved if they are~~] published in a refereed professional journal or other publication, if the article specifically relates to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research. Continuing education credit hours for authorship of a scholarly publication may be reported using the following guidelines:

(a) Senior author: first of two (2) or more authors listed.

(b) Co-author: second of two (2) authors listed; [.] or

(c) Contributing author: all but senior of three (3) or more authors.

(d) Research papers:

1. Single author - ten (10) hours.

2. Senior author - eight (8) hours.

3. Co-author - five (5) hours.

4. Contributing author - three (3) hours.

(e) Technical articles:

1. Single author - five (5) hours.

2. Senior author - four (4) hours.

3. Co-author - three (3) hours.

4. Contributing author - two (2) hours.

(f) Information sharing articles - one (1) hour.

(g) Abstracts:

1. Senior author - two (2) hours.

2. Co-author - one (1) hour.

(6) Poster sessions.

(a) Continuing education credit shall be approved [~~may be obtained~~] for attending juried poster sessions [~~at national or state professional meetings~~] that meet the criteria for appropriate subject matter established in subsection (3) of this section upon submission of the documentation required in paragraph (c) of this subsection.

(b) One (1) hour of continuing education credit shall be allowed for each hour of [~~six (6)~~] posters reviewed not to exceed three (3) [~~five (5)~~] hours in a continuing education year.

(c) The following documentation shall be submitted for approval of continuing education credit for attending juried poster sessions:

1. Certificate of attendance or completion indicating:

a. The date of the session;

b. The number of hours requested;

c. The objectives of the session; and

d. The session provider; [~~and~~]

2. An agenda or outline of the session;

3. A program, flyer, or brochure describing the poster session; or

4. Handouts from the poster session.

(7) Continuing education hours for presenters.

(a) Credit shall not be given for presentations to the lay public;

(b) Credit [~~Hours~~] shall be allowed [~~requested~~] only once for the same presentation;

(c) The presenter shall receive twice the number of hours approved for the activity;

(d) Two (2) hours per topic shall be allowed for presenters of juried poster sessions that met the criteria for appropriate subject matter established in subsection (3) of this section [~~at national or state professional meetings~~]; and

(e) A copy of the presentation or poster, abstract or manuscript, and documentation of the peer review process shall be included in the licensee's or certificate holder's documentation list.

(8) Exhibits. (a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section.

(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.

(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:

1. Date;

2. Provider;

3. Timeline; and

4. Content of the exhibits.

(9) Residency and fellowship programs.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a residency or fellowship program, if the program is:

1. At the postbaccalaureate level;

2. Dietetics-related;

3. Formalized or structured experiences; and

4. Sponsored by a U.S. regionally accredited college or university of an institution accredited or approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(b) Documentation of the above shall be submitted and shall include:

1. Certificate of completion; and

2. Name, address, phone number, e-mail address, and fax number of the provider.

(10) Certification program.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a certification approved by the board that:

1. Is dietetics-related;

2. Requires that candidates meet eligibility requirements; and

3. Requires that a candidate or certificate holder pass an examination to become certified initially, and to be recertified.

(b) Up to fifteen (15) hours of continuing education credit, for the exam only, may be carried over to the following year.

(c) Documentation. A document verifying the date of issue, duration of certification, and name, address, phone number, e-mail address, and fax number of the provider shall be submitted.

(11) Self study courses. (a) Fifteen (15) hours of continuing education credit shall be granted for completion of a Commission on Dietetic Registration preapproved self-study program that meets the following criteria:

1. The program shall address a single specific subject in depth;

2. Test items shall accompany the program and be based on its content; and

3. The program may be audio-based; computer based; printed; video-, DVD-, or CD-based or Web-based.

(b) The following documentation shall be submitted.

1. A certificate of attendance or completion;

2. An agenda or outline of the program; and

3. Description of the objectives, date, timeline, and provider of the program.

Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) A [~~An organization or~~] person seeking [~~which seeks~~] prior approval of a course, program or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity.

(2) The application shall state the:

(a) Dates;

(b) Subjects offered,

(c) Objectives for the activity;

(d) Total hours of instruction;

(e) Names and qualifications of speakers; and

(f) Other pertinent information.

(3) The board shall approve or deny timely and complete appli-

cations before the commencement of the activity.

(4) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

(5) Programs pertaining to the following subject areas shall require preapproval by the board:

(a) Experiential skill development- fifteen (15) hour limit;

(b) Independent learning programs that are sponsored and related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research- ten (10) hour limit;

(c) Study groups involving nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research - ten (10) hour limit; and

(d) Professional reading of journal articles related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research - three (3) hour limit.

Section 4. Subsequent Approval of Continuing Education Activities. (1) Individual or group educational activities for which program providers or sponsors have not requested continuing education hour approval prior to the date of the activity may be approved by the board for continuing education credit. Activities which have received prior approval may not be submitted on a subsequent approval basis.

(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended.

(a) Dates;

(b) Subjects offered;

(c) Learner educational objectives for the activity and anticipated outcomes;

(d) Total hours of instruction;

(e) Names and qualifications of speakers;

(f) A timing outline, including time spent for registration, introductions, welcomes, and coffee and meal breaks;

(g) The number of continuing education hours requested; and

(h) Any other pertinent information.

(3) A request for approval of continuing education program based on:

(a) A program that does not require preapproval [~~Requests for approval shall be submitted as follows:~~

~~(a) Normal continuing education programs~~] shall be submitted within sixty (60) [~~thirty (30)~~] days of completion;

(b) Authorship of a publication [~~Publications~~] shall be submitted within six (6) months of the date of publication; and

(c) Academic coursework shall be submitted within the licensure or certification [~~one (1)~~] year of the course completion date.

(4) Documentation of attendance at a workshop, seminar, or lecture related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research that has not been approved by the Commission on Dietetic Registration shall be submitted within sixty (60) days of attendance.

(5) Activities which have not received prior approval may be submitted by individuals on a subsequent approval basis with rationale demonstrating continuing education value.

Section 5. Provider Preapproval. (1) A provider of a continuing education program seeking to obtain prior approval from the board for continuing education certification shall provide the following documentation to the board not less than sixty (60) days prior to the event:

(a) Dates;

(b) Subjects offered;

(c) Objectives for the activity;

(d) Total hours of instruction;

(e) Names and qualifications of speakers; and

(f) Other pertinent information.

(2) The board shall approve or deny timely and complete applications before the commencement of the activity.

(3) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

Section 6. Appeals Procedure. (1) A licensee or certificate holder may appeal decisions regarding continuing education by filing a written appeal.

(2) An appeal shall be sent to the board within thirty (30) calendar days after notification of denial and shall be considered by the board at its next scheduled meeting.

Section 7. [~~6.~~] Waiver of Continuing Education. (1) A licensee or certificate holder who is medically disabled or ill may be granted:

(a) A waiver of the continuing education requirements; or

(b) An extension of time within which to complete continuing education requirements, or make required reports.

(2) A written request for waiver or extension of time shall be:

(a) Submitted by the licensee or certificate holder; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time to complete them may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or certificate holder shall reapply for further waiver or extension.

CHERYL BENTLEY, Chairperson
JOHN FARRIS, Secretary

APPROVED BY AGENCY: July 5, 2006

FILED WITH LRC: July 26, 2006 at noon

CONTACT PERSON. Claude Wagner, Director, Finance and Administration Cabinet, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 239, fax (502) 696-5890.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 10, 2006)

301 KAR 2:083. Holding and intrastate transportation [~~Transportation and holding~~] of captive cervids.

RELATES TO: KRS 150.025, [~~150.180,~~] 150.280, 150.290, 150.725, 150.730, 150.735, 150.740

STATUTORY AUTHORITY: KRS 150.025, [~~150.180(6),~~] 150.280, 150.720

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. [~~KRS 150.180(6) requires that a person who wishes to transport wildlife into Kentucky, obtain a permit from the department.~~] KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in [~~into~~] Kentucky.

Section 1. Definitions. (1) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(2) "Cervid" means a member of the family Cervidae. [~~(2) "Conditional permit" means a temporary permit issued by the department to a facility while the facility attempts to come into compliance with this administrative regulation.~~]

(3) "Commercial captive cervid permit" means a permit for propagation and taking of captive cervids by any legal hunting or

slaughter methods, which allows the permit holder to sell, offer to sell, trade, or barter captive cervids, parts thereof, or products produced by captive cervids

(4) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(5) [~~(4)~~] "KDFWR" means the Kentucky Department of Fish and Wildlife Resources.

(6) [~~(5)~~] "Line post" means a post in a fence that is not a corner or end post.

(7) "Noncommercial captive cervid permit" means a permit to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered

Section 2. Fencing and Holding Requirements. (1)(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the aforementioned fencing.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

[~~(g) Primary containment fences constructed after the effective date of this administrative regulation shall be a minimum of six (6) feet from the property boundary.~~]

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a [~~an existing~~] property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity and shall be approved by the department prior to installation.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) These crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are as follows:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall be maintained in a game-proof condition at all times.

Section 3. Capture and Handling Facilities. (1) Each captive facility shall have an approved handling facility or device, such as a squeeze chute or crush, which facilitates inspection, handling or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities listed in subsection (1) of this section, alternatives such as dart guns, tranquilizers or other devices which immobilize an animal shall be approved by the department before being used.

Section 4. Tagging [~~and Recordkeeping~~]. (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture CWD program requirements established in 302 KAR 20:066

(2) Captive cervids over six (6) months [~~one (1) year~~] old shall be uniquely identified with a plastic "flop" tag in at least one (1) ear that is clearly visible and identifiable [~~at a distance of fifty (50) feet and a permanent USDA metal ear tag in one (1) ear~~].

(3) [~~(2)~~] KDFWR may approve alternatives for plastic "flop" tags for bona fide zoos, nature centers, or similar educational institutions upon written request. One (1) of the following may be substituted for ear tags or other approved forms [~~form~~] of identification:

(a) Lip or ear tattoo; [~~or~~]

(b) Microchip; or

(c) Branding

[~~(3) Alternatives to tagging may be granted to bona fide zoos, nature centers, or similar educational institutions upon request.~~]

Section 5. Ingress and Egress. (1) The permit holder [~~owner~~] shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder [~~owner~~] is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder [~~owner~~] shall report each escape to KDFWR by telephone (1-800-858-1549).

(3) The permit holder [~~owner~~] shall then file a written report (KDFWR, #1 Sportsman's Lane [~~Game Farm Road~~], Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits) within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder [~~owner~~] shall also report known ingress of wild cervids into the enclosure by filing a written report to KDFWR (KDFWR, #1 Sportsman's Lane [~~Game Farm Road~~], Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits).

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements. (1) For species whose adult weight is less than 400 pounds, each individual animal [~~Each deer~~] shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is

400 pounds or more, shall require [elk requires] at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid [cervid] permit shall not be issued for the following [species]:

(1) Genus Cervus spp. except Cervus elaphus nelsoni [Red deer (Cervus elaphus elaphus)];

(2) Genus Axis spp. [Axis deer (Axis axis)];

(3) [Rusa deer (Cervus timorensis);

(4) Sambar deer (Cervus unicolor);

(5) Sika deer (Cervus nippon),]

[(6)] Roe deer (Capreolus capreolus and Capreolus pygarus); or

(4) [(7)] Hybrids thereof.

Section 8. [Genetic Purity Testing. Prior to moving or importing live elk, proof of genetic testing to ensure the purity of each animal shall be performed to prevent the introduction of red deer or hybrid nonnative species. Offspring of elk documented to be genetically pure via testing shall be exempt from genetic testing.

Section 9.] Captive Cervid Permits. (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be **processed in accordance with the provisions of KRS 150.730(2)** [approved within 30 days of receipt of a completed application if the application and inspection provided by subsection (4) of this section shows compliance with all applicable statutes and administrative regulations.] A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as provided in Subsection (4) of this Section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the KDFWR.

(a) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association (AZA) shall not be required to obtain or renew a KDFWR captive cervid permit. Zoos and facilities certified but not accredited by the AZA shall be required to obtain and renew a KDFWR captive cervid permit.

(b) A commercial captive cervid permit shall be required for a facility owned or leased by persons wishing to sell, offer to sell, trade, or barter captive cervids. A person shall not sell, offer to sell, trade, or barter native cervids obtained from the wild.

(c) A noncommercial captive cervid permit shall be required for a person wishing to possess captive cervids, but who do not intend to sell, offer for sale, trade, or barter cervids.

(d) All wild cervids shall be removed from the facility prior to initial inspection.

(e) A permit shall identify the species of cervids being held. [Before a captive cervid permit is issued, each facility shall pass an inspection that certifies and documents compliance with the applicable Kentucky Department of Agriculture requirements listed in 302 KAR 20:040, 302 KAR 20.065, and 302 KAR 20.066 and the KDFWR requirements listed in 301 KAR 2:081, 301 KAR 2:082, and this administrative regulation.]

(2) Duration.

(a) A commercial captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February, and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations [the applicable Kentucky Department of Agriculture requirements listed in 302 KAR 20:040, 302 KAR 20.065, and 302 KAR 20.066 and the KDFWR requirements listed in 301 KAR 2:081, 301 KAR 2:082, and this administrative regulation].

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February, and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(3) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility **in accordance with the provisions of KRS 150.735(3).**

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (4) of this section.

(c) The purchaser or lessee of the facility shall apply for transfer of the existing captive cervid permit on a KDFWR captive cervid permit transfer application form. A copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer shall be attached to a completed transfer application form and sent to KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a captive cervid permit application.

[(3) Species. A permit shall identify the species and number of animals being held.]

(4) Inspections.

(a) Before a captive cervid permit is issued, renewed or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify KDFWR to request an inspection which shall be conducted within **thirty** (30) days of receipt of the request.

(c) **Each facility** [Facilities] shall be inspected annually after issuance of a captive cervid permit to certify and document that the facility is in compliance with [the 301 KAR 2:081, 301 KAR 2:082 and] this administrative regulation.

(d) A captive cervid facility inspection form shall be completed by a KDFWR law enforcement captain, who shall then forward the original copy to KDFWR Headquarters for processing.

(5) Revocation or suspension. A person identified by a KDFWR law enforcement officer as being in violation of a Kentucky statute or administrative regulation pertaining to the holding of captive cervids shall be issued a notice of violation, in the form of a certified letter from the commissioner. A person receiving a notice of violation shall have his or her permit suspended, until which time he or she comes into compliance with all applicable statutes and administrative regulations. Failure to come into compliance with all applicable statutes and administrative regulations within sixty (60) days from the date the notice of violation is received shall result in a citation being issued. If convicted, his or her permit may be revoked and may cause the captive cervids to be immediately seized by the department. A person whose captive cervid permit is suspended or revoked shall not, without written approval from the department, transfer or expand the facility or sell, offer to sell, trade, transport, hunt or slaughter captive cervids which are housed in that facility. [convicted of a violation of KRS Chapter 150 or the 301 KAR shall have his permit revoked.]

(6) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(7) Expansions.

(a) A facility may be expanded at any time and shall conform to the fencing specifications described in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the Department as provided in subsection (4) of this section [New cervids shall not be moved into the facility until the facility is in compliance with this administrative regulation and has been issued a captive cervid permit by the department].

Section 9. Origin and Disposition of Captive Cervids. (1) Cervids obtained from the wild shall only be held by a wildlife rehabilitator permitted pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except

for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; or

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. [~~Transportation Permits. (1) Before a person may import a cervid into Kentucky from out of the state, he shall first obtain a captive cervid permit and a transportation permit from the department.~~

~~(2) Before a transportation permit for cervids shall be issued, the applicant shall provide documentation to the department that the animals being imported are in compliance with all applicable Kentucky Department of Agriculture health requirements found in 302 KAR 20:040, 302 KAR 20:065, and 302 KAR 20:066.~~

~~(3) Application for transportation permits shall be made on a standard form provided by the department or by telephone from 8 a.m. to 4:30 p.m. EST, Monday through Friday (1-800-858-1549) provided the applicant holds a valid captive cervid permit and Kentucky Department of Agriculture verifies that all health requirements are met. At the time of application for a transportation permit, the applicant shall provide to the department:~~

~~(a) The location of the source herd,~~

~~(b) The species being imported,~~

~~(c) The number being imported; and~~

~~(d) The date of importation.~~

~~(4) Payments for transportation permits issued by telephone shall be received within seven (7) business days.~~

~~(5) A person shall have a cervid transportation permit and a certificate of veterinary inspection in his or her possession while transporting cervids.~~

~~Section 11.~~] Intrastate Movement of Cervids. (1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR 20:066.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in his or her possession while transporting cervids. [~~Before an authorization number is issued,~~] the department shall receive confirmation from the Kentucky Department of Agriculture that the animals are in compliance with the health requirements established in 302 KAR 20:040, 302 KAR 20:065 and 302 KAR 20:066. The following information shall also be provided to the department

~~(a) The cervid species being moved,~~

~~(b) The location of the source herd;~~

~~(c) The location where the cervids are being shipped;~~

~~(d) The number of cervids being moved;~~

~~(e) The purpose for which the cervids are being moved, including slaughter, export to another state, movement to a veterinarian or another captive facility, and~~

~~(f) The date of movement.~~

~~(3) If a person needs to obtain an intrastate transportation permit to move a cervid for veterinarian care after the hours referred to in subsection (3) of this section, he may call the Division of Law Enforcement's dispatch number at 1-800-252-5378. The dispatch office shall record the information in subsection (3)(a) through (f) of this section.~~

~~(4) The captive facility receiving shipment shall:~~

~~(a) Be in compliance with this administrative regulation and 301 KAR 2:081;~~

~~(b) Be in compliance with the Department of Agriculture's regulations listed in subsection (2) of this section, and~~

~~(c) Have a valid captive cervid permit.~~

~~(5) A person transporting cervids shall have both the department and the Department of Agriculture issued authorization number in his or her possession while transporting cervids.~~]

Section 11. [~~12.~~] Selling Cervids. A permit holder who holds a commercial captive cervid permit [~~permittee~~] may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. [~~13.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~Standard Department Transportation Permit Application, Revised 6/93;~~

~~(b)~~] "Captive Cervid Permit Application", 7/13/06 edition;

(b) "Captive Cervid Permit Transfer Application", 7/13/06 edition; and

(c) "Captive Cervid Facility Inspection Form", 7/13/06 edition, [~~5/24/02 edition; and~~

~~(c) Conditional Captive Cervid Permit Application, 09/06/02 edition.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, [~~Game Farm Road,~~] Frankfort, Kentucky 40601, Monday through Fnday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For Dr. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: August 11, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400 fax (502) 564-9136.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 10, 2006)

301 KAR 3:022. License, tag and permit fees.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720 [~~150.170, 150.175, 150.235, 150.240, 150.290, 150.485, 150.520, 150.525, 150.603, 150.660~~]

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.175 establishes the kinds of licenses and tags. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. The fees established in this section shall apply to licenses and permits purchased for the 2006 license year.

(1) Licenses, tags, and permits listed in this subsection [~~section~~] shall be valid from March 1 through the last day of February the following year.

(a) [~~(1)~~] Sport fishing licenses:

1. [~~(a)~~] Statewide annual fishing license (resident): fifteen (15) dollars;

2. [~~(b)~~] Statewide annual fishing license (nonresident): thirty-five (35) dollars;

3. [~~(c)~~] Joint statewide fishing license (resident): twenty-seven (27) dollars; and

4. [~~(d)~~] Trout permit (resident or nonresident): ten (10) dollars.

(b) [~~(2)~~] Commercial fishing licenses:

1. [~~(a)~~] Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $125; and

2. [~~(b)~~] Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.

(c) [~~(3)~~] Commercial fishing gear tags (not to be sold singly).

1. [~~(a)~~] Commercial fishing gear tags (resident) block of 10

tags: fifteen (15) dollars; and

2. [(b)] Commercial fishing gear tags (nonresident) block of ten (10) tags: ninety (90) dollars.

(d) [(4)] Commercial shovelnose sturgeon permit for resident and nonresident: $500 [dollars].

(e) [(5)] Hunting licenses:

1. [(a)] Statewide hunting license (resident): fifteen (15) dollars;

2. [(b)] Statewide hunting license (nonresident): $115 [dollars];

3. [(c)] Statewide junior hunting license (resident or nonresident): eight (8) dollars and seventy-five (75) cents;

4. [(d)] Statewide waterfowl permit (resident or nonresident): ten (10) dollars; and

5. [(e)] Migratory game bird permit (resident or nonresident): five (5) dollars.

(f) [(6)] Combination hunting and fishing license (resident): twenty-two (22) dollars and fifty (50) cents.

(g) [(7)] Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(h) [(8)] Trapping licenses:

1. [(a)] Trapping license (resident): seventeen (17) dollars and fifty (50) cents;

2. [(b)] Trapping license (resident landowner/tenant): ten (10) dollars; and

3. [(c)] Trapping license (nonresident). $120.

(i) [(9)] Game permits:

1. [(a)] Resident quota elk hunt permit: twenty-five (25) dollars;

2. [(b)] Nonresident quota elk hunt permit: $300;

3. [(c)] Game permit, resident deer: twenty-five (25) dollars;

4. [(d)] Game permit, nonresident deer: fifty (50) dollars;

5. [(e)] Junior game permit, deer (resident or nonresident): fifteen (15) dollars;

6. [(f)] Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): twelve (12) dollars and fifty (50) cents;

7. [(g)] Bonus quota hunt deer permit (resident or nonresident): fifteen (15) dollars;

8. [(h)] Game permit, resident spring turkey: twenty (20) dollars;

9. [(i)] Game permit, nonresident spring turkey: fifty (50) dollars;

10 [(j)] Game permit, fall firearm resident turkey: fifteen (15) dollars;

11 [(k)] Game permit, fall firearm nonresident turkey: fifty (50) dollars;

12 [(l)] Game permit, fall archery resident turkey: fifteen (15) dollars;

13. [(m)] Game permit, fall archery nonresident turkey: fifty (50) dollars; and

14. [(n)] Junior game permit, turkey (resident or nonresident): fifteen (15) dollars.

(j) [(10)] Peabody or Addington Enterprises-Robinson Forest Individual permit: twelve (12) dollars and fifty (50) cents.

(k) [(11)] Commercial mussel licenses:

1. [(a)] Musseling license (resident): $400;

2. [(b)] Musseling license (nonresident): $1,600;

3. [(c)] Mussel buyer's license (resident): $600; and

4. [(d)] Mussel buyer's license (nonresident): $1,600.

(l) [(12)] Sportsman's license (resident) (includes resident hunting and fishing combination, spring turkey permit, fall firearm turkey permit, fall archery turkey permit, trout permit, state waterfowl permit and game permit for deer): eighty (80) dollars.

(m) [(13)] Land Between the Lakes hunting permit: twenty (20) dollars.

(2) [Section 2.] Licenses, tags and permits, listed in this subsection [section] shall be valid for the calendar year in which they are issued.

(a) [(1)] Live fish and bait dealer's licenses:

1. [(a)] Live fish and bait dealer's license (resident): fifty (50) dollars; and

2. [(b)] Live fish and bait dealer's license (nonresident): $100.

(b) [(2)] Commercial taxidermist license: $125.

(c) [(3)] Commercial guide licenses:

1. [(a)] Commercial guide license (resident): $125; and

2. [(b)] Commercial guide license (nonresident): $300.

(d) [(4)] Nonresident hunting preserve license: twenty (20) dollars.

(e) [(5)] Shooting preserve permit: $150.

(f) [(6)] Commercial fox hound training enclosure permit: $275.

(g) [(7)] Dog training area permit: $150.

(h) [(8)] Collecting permits:

1. [(a)] Educational wildlife collecting permit: ten (10) dollars; and

2. [(b)] Scientific wildlife collecting permit: $200.

(i) [(9)] Nuisance wildlife control operators (NWCO) permit: $100;

(j) [(10)] Food permits:

1. [(a)] Food permit for selling bobwhite quail from propagation farms only: $150; and

2 [(b)] Retail food permit for propagated quail: five (5) dollars.

(k) [(11)] Pay lake license:

1. [(a)] First two (2) acres or less: $125; and

2. [(b)] Per additional acre or part of acre: twenty (20) dollars.

(l) [(12)] Commercial captive wildlife permit: $100.

(m) [(13)] Commercial fish propagation permit: fifty (50) dollars.

(n) [(14)] Wildlife rehabilitator's permit: twenty-five (25) dollars.

(o) [(15)] Annual wildlife transportation permit: $250; and

(p) [(16)] Peabody, Starfire, or Robinson Forest Wildlife Management Areas annual event permit: $250.

(3) [Section 3.] Licenses, tags and permits listed in this subsection [section] shall be valid for three (3) years from the date of issue.

(a) [(1)] Falconry permit: [effective for permits with an effective beginning date on and after January 1, 2001, the cost shall be] seventy-five (75) dollars.

(b) [(2)] Noncommercial captive wildlife permit: seventy-five (75) dollars.

(4) [Section 4.] Licenses, tags and permits listed in this subsection [section] shall be valid for the date or dates specified on each.

(a) [(1)] Short-term licenses:

1. [(a)] One (1) day resident fishing license: six (6) dollars;

2. [(b)] Two (2) day resident fishing license: twelve (12) dollars;

3. [(c)] One (1) day nonresident fishing license: seven (7) dollars;

4. [(d)] Two (2) day nonresident fishing license: fourteen (14) dollars;

5. [(e)] Fifteen (15) day nonresident fishing license: twenty-five (25) dollars;

6. [(f)] Five (5) day nonresident hunting license (not valid for deer, elk or turkey hunting): thirty-two (32) dollars and fifty (50) cents; and

7. [(g)] Three (3) day fur bearer's license: fifty (50) dollars.

(b) [(2)] Individual wildlife transportation permit: twenty-five (25) dollars.

(c) [(3)] Special commercial fishing permit: $600.

(d) [(4)] Commercial waterfowl shooting area permit: $125.

(e) [(5)] Shoot to retrieve field trial permits:

1. [(a)] Per trial (maximum four (4) days): fifty (50) dollars; and

2. [(b)] Single day: fifteen (15) dollars.

(f) [(6)] Boat dock permits (per year): five (5) dollars.

(g) [(7)] Peabody, Starfire, or Robinson Forest individual event permit: twenty-five (25) dollars.

(5) [Section 5.] Licenses, tags and permits listed in this subsection [section] shall be valid on a per unit basis as specified.

(a) [(1)] Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(b) [(2)] Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(c) [(3)] Horse stall rental (per space, per day): two (2) dollars.

(d) [(4)] Dog kennel rental (per dog, per day): fifty (50) cents.

(e) [(5)] Pond stocking fee (per stocking): twenty-five (25) dollars.

(f) [(6)] Captive cervid permit (per facility, per year): $100.

(6) [Section 6.] The following licenses listed in the subsection shall be valid from April 1 through March 31 of the following year:

(a) [(1)] Fur processor's license (resident): $175.

(b) [(2)] Fur buyer's license (resident): seventy-five (75) dollars.

(c) [(3)] Fur buyer's license (nonresident): $300.

(7) [Section 7.] Captive Cervid Permits.

(a) [(1)] Permits for holding captive cervids issued under 301

KAR 2:083 shall be valid for one (1) year from the date of issue and shall be perpetually renewable if the holder has complied with this administrative regulation.

(b) [(2)] The fee for a captive cervid permit shall be $100 per facility. The renewal fee shall be $100.

Section 2. The fees established in this section shall apply to licenses and permits purchased for the 2007 license year.

(1) Licenses, tags, and permits listed in this subsection shall be valid from March 1 through the last day of February the following year.

(a) Sport fishing licenses:

1. Statewide annual fishing license (resident): twenty (20) dollars;

2. Statewide annual fishing license (nonresident): fifty (50) dollars;

3. Joint statewide fishing license (resident): thirty-six (36) dollars; and

4. Trout permit (resident or nonresident): ten (10) dollars.

(b) Commercial fishing licenses:

1. Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $150; and

2. Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.

(c) Commercial fishing gear tags (not to be sold singly):

1. Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

2. Commercial fishing gear tags (nonresident) block of ten (10) tags: $100.

(d) Commercial shovelnose sturgeon permit for resident and nonresident: $500.

(e) Hunting licenses:

1. Statewide hunting license (resident): twenty (20) dollars;

2. Statewide hunting license (nonresident): $130;

3. Statewide junior hunting license (resident or nonresident): five (5) dollars;

4. Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and

5. Migratory game bird permit (resident or nonresident): ten (10) dollars.

(f) Combination hunting and fishing license (resident): thirty (30) dollars.

(g) Senior/disabled combination hunting and fishing license (resident) five (5) dollars.

(h) Trapping licenses:

1. Trapping license (resident) twenty (20) dollars;

2. Trapping license (resident landowner/tenant): ten (10) dollars;

3. Trapping license (nonresident): $130; and

4. Junior trapping license (resident): five (5) dollars.

(i) Game permits:

1. Resident quota elk hunt permit: thirty (30) dollars;

2. Nonresident quota elk hunt permit: $365;

3. Resident out-of-zone elk hunt permit: thirty (30) dollars;

4. Nonresident out-of-zone elk hunt permit: $365;

5. Game permit, resident deer: thirty (30) dollars;

6. Game permit, nonresident deer: sixty (60) dollars;

7. Junior game permit, deer (resident or nonresident): ten (10) dollars;

8. Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

9. Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

10. Game permit, resident spring turkey: thirty (30) dollars;

11 Game permit, nonresident spring turkey: sixty (60) dollars.

12 Game permit, resident fall turkey: thirty (30) dollars;

13. Game permit, nonresident fall turkey: sixty (60) dollars; and

14 Junior game permit, turkey (resident or nonresident): ten (10) dollars.

(j) Peabody individual permit: fifteen (15) dollars.

(k) Commercial mussel licenses:

1. Musseling license (resident): $400;

2. Musseling license (nonresident): $1,600;

3. Mussel buyer's license (resident): $600; and

4. Mussel buyer's license (nonresident): $1,600.

(l) Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

(m) Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

(n) Land Between the Lakes hunting permit: twenty (20) dollars.

(o) Conservation permit: five (5) dollars.

(2) Licenses, tags and permits, listed in this subsection shall be valid for the calendar year in which they are issued.

(a) Live fish and bait dealer's licenses:

1. Live fish and bait dealer's license (resident): fifty (50) dollars; and

2. Live fish and bait dealer's license (nonresident): $150.

(b) Commercial taxidermist license: $150.

(c) Commercial guide licenses:

1. Commercial guide license (resident): $150; and

2. Commercial guide license (nonresident): $400.

(d) Shooting preserve permit: $150.

(e) Dog training area permit: fifty (50) dollars.

(f) Collecting permits:

1. Educational wildlife collecting permit: twenty-five (25) dollars; and

2. Scientific wildlife collecting permit: $250.

(g) Nuisance wildlife control operators (NWCO) permit: $100;

(h) Pay lake license:

1. First two (2) acres or less: $150; and

2. Per additional acre or part of acre: twenty (20) dollars.

(i) Commercial captive wildlife permit: $150.

(j) Commercial fish propagation permit: fifty (50) dollars.

(k) Wildlife rehabilitator's permit twenty-five (25) dollars.

(l) Annual wildlife transportation permit: $250; and

(m) Peabody Wildlife Management Area annual event permit: $250.

(3) Licenses, tags and permits listed in this subsection shall be valid for three (3) years from the date of issue.

(a) Falconry permit: seventy-five (75) dollars.

(b) Noncommercial captive wildlife permit: seventy-five (75) dollars.

(4) Licenses, tags and permits listed in this subsection shall be valid for the date or dates specified on each.

(a) Short-term licenses:

1. One (1) day resident fishing license: seven (7) dollars;

2. One (1) day nonresident fishing license: ten (10) dollars;

3. Seven (7) ~~[Five (5)]~~ day nonresident fishing license: thirty (30) ~~[forty (40)]~~ dollars;

4 Fifteen (15) day nonresident fishing license: forty (40) dollars.

5 One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.

6. [6.] One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

7. [6.] Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;

8. [7.] Three (3) day fur bearer's license: fifty (50) dollars; and

(b) Individual wildlife transportation permit: twenty-five (25) dollars.

(c) Special resident commercial fishing permit: $600.

(d) Special non-resident commercial fishing permit: $900

(e) Commercial waterfowl shooting area permit: $150.

(f) Shoot to retrieve field trial permits:

1. Per trial (maximum four (4) days): seventy-five (75) dollars; and

2. Single day: twenty-five (25) dollars.

(g) Boat dock permits (per year): five (5) dollars.

(h) Peabody individual event permit: twenty-five (25) dollars.

(5) Licenses, tags, and permits listed in this subsection shall be valid on a per unit basis as specified.

(a) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(b) Pheasant hunt permit (per person, per day): twenty-five

(25) dollars.
(c) Horse stall rental (per space, per day): two (2) dollars.
(d) Dog kennel rental (per dog, per day): fifty (50) cents.
(e) Pond stocking fee (per stocking): twenty-five (25) dollars.
(f) Commercial captive cervid permit (per facility, per year): $150.
(g) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.
(6) The following licenses listed in this subsection shall be valid from April 1 through March 31 of the following year:
(a) Fur processor's license (resident): $150.
(b) Fur buyer's license (resident): fifty (50) dollars.
(c) Fur buyer's license (nonresident): $300.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-9136.

GENERAL GOVERNMENT CABINET
Department of Agriculture
(As Amended at ARRS, October 10, 2006)

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220
STATUTORY AUTHORITY: KRS 247.220
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.220(2) authorizes the Fair Council and the Commissioner of Agriculture to promulgate administrative regulations regarding grants for local fair facilities. This administrative regulation establishes requirements for administration of and participation in the local fairs program. [Provides rules and administrative regulations by which the state aid to local fairs program shall be administered. It explains to the Department of Agriculture, Division of Show] [Shows] [and Fair Promotion] [Fairs][, and to the local fairs their responsibilities in the program.]

Section 1. General Administration. (1) The Director of the Division of Show [Shows] and Fair Promotion [Fairs] in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Fair officials for local fair boards applying for state funds shall make a reasonable effort [Local fair boards applying for state funds shall see that a reasonable effort is made by local fair officials] to develop a program that will supplement agricultural educational and promotional activities [that coincide with the objectives of agencies officially charged with these responsibilities].

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events shall be held on consecutive days with the following exceptions:

(a) A fair [Fairs] may be closed on Sundays, if the local board desires; and

(b) A fair [Fairs] may conduct certain events, such as harness horse racing, on separate dates If:

1. The [providing the] local board files a request to conduct the event with the Division of Show [Shows] and Fair Promotion;

2. The request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture for the Commissioner's approval or rejection of the local board's request; and

3. The Commissioner of Agriculture approves the request [Fairs] [and that request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture with a recommendation by the Kentucky Fair Council that the Commissioner of Agriculture approve or reject the local board's request] .

(4) A local fair board [Local boards] shall establish classes and premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry.

(5) [Local boards shall establish classes based upon the Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show][Shows][and Fair Promotion] [Fairs] [, Uniform Classes List.

(5) State funds shall be limited to crops, foods, domestic livestock, poultry, 4-H, FFA and FHA projects, harness horse racing and other horse events, if they have a good potential for profitable expansion or the improvement of the agriculture economy of the area.

(6)] Ribbon colors at each local fair shall be as follows.
(a) Blue for first place;
(b) Red for second;
(c) White for third;
(d) Pink for fourth;
(e) Yellow for fifth;
(f) Green for sixth;
(g) Light green for seventh;
(h) Brown for eighth;
(i) Gray for ninth; and
(j) Light blue for tenth.

(6) [(7)] A local fair board [Fair boards] seeking state funds shall comply with local and state health regulations [provide adequate health facilities] for exhibitors tending exhibits and for fair attendants.

(7) [(8)] A fair event [Fair events] held at a location other than the fairgrounds shall [may] qualify for aid if [such an event is held during corresponding consecutive dates with the fair and] publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) A local fair board shall make a request for state assistance [Requests for state assistance shall be made] annually on an Initial Request for State Aid to Local Agricultural Fairs Form, and shall mail it [and mailed] to the Division of Show [Shows] and Fair Promotion [Fairs] by March 1 of the year in which the fair is conducted. The Commissioner of Agriculture shall [may] allow a fair to enter the program after the application deadline has passed for good cause shown.

(2) A local fair board shall mail a Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show [Shows] and Fair Promotion [Fairs], Open Class Dairy and Beef Show Information Form (1995) concerning the fair's beef and dairy shows [shall be mailed] to the Division of Show [Shows] and Fair Promotion [Fairs] by May 1 of the year in which the fair is conducted.

(3) [Fairs shall submit a draft copy of their catalog to the Division of Shows and Fairs at least forty-five (45) days before their fair. This shall include the same information required in the printed catalog, excluding advertisements. A printed copy of the fair's catalog shall be submitted no later than thirty (30) days before the start of the fair. No payment shall be made before the printed catalog is received by the Division of Shows and Fairs.

(4)] A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture [prior to the second fair payment. This payment shall include the second agricultural premium payment, the second harness racing payment, and the payment for horse events].This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events, and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as the number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the Director of the Division of Show [Shows] and Fair Promotion [Fairs] within forty-five (45) days following the event and no financial statement shall be accepted for payment after December 1 of the year in which the fair is conducted without approval from the Kentucky Fair Council, based on budgetary considerations .

Section 3. Entries. (1) (a) A Fair [Fairs] qualifying for state

funds shall provide for adult and youth divisions.

(b) Youth exhibits shall include 4-H, FFA, FHA, and shall [may] include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county, or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) A local fair board [Local fair boards] receiving state money shall assure [see] that exhibits eligible in more than one (1) class or section are exhibited only in the class or section for which it best qualifies. An [Under no circumstances may an] exhibitor shall not show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) [No more than two (2) exhibits shall be made from a household in any one (1) class except official 4-H or FFA projects and where purebred animals are registered to other members of the household.

(5)] All domestic livestock, poultry, and horse entries shall meet the specifications of the health administrative regulations of the State Board of Agriculture as set forth in 302 KAR 20.065 relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) A qualified fair [All qualified fairs] shall have an official fair catalog. A draft [rough] copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Division of Show [Shows] and Fair Promotion [Fairs] at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the Director of the Department of Agriculture's Division of Show [Shows] and Fair Promotion [Fairs] no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:

(a) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture; [-]
2. Extension Service; [-]
3. Farm Bureau; [-]
4. Local Livestock Association (if one exists); and [-]
5. Local Horsemen's Association (if one exists);[-]

(b) A schedule of events planned as a part of the fair; [-]

(c) Local fair rules and administrative regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified; "[-]

(d) General information by fair departments showing classes and premium lists;[-]

(e) Animal health administrative regulations, 302 KAR 20:040 and 302 KAR 20:065; and [Health administrative regulations by types of livestock to be exhibited.]

(f) A rule to the effect that "entries made in 4-H, FFA and FCCLA [FHA] classes shall have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event a local fair shall encourage, judges [shall be encouraged] to present reasons for their evaluations and decisions.

(2) A person shall not [No person shall] be an exhibitor or act as an agent in any division or department for which he serves as a judge.

Section 6. State Allocation. (1)(a) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. The [In no instance shall the] total agricultural premium payment for one (1) or more fairs held annually in a single county shall not exceed $4,500. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded.

(b) The first agricultural premium payment to each fair shall be made after the printed catalog is received and may be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of $2,250.

(c) The second agricultural premium payment shall be made after the fair's financial statement is received, If [provided] all remaining requirements have been met and the necessary records submitted, and shall be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of $4,500 less the amount of the first agricultural premium payment.

(d) The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional $2,000 grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant shall be made [is] on an equal matching fund basis and shall be [is] based completely on the amount of money paid in premiums and awards for horse events' classes. The payment of this grant shall come after the financial statement of the fair is received by the Department of Agriculture and shall be included in the fair's second fair payment. The qualified fair shall submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3)(a)The Department of Agriculture shall make available to a qualified agriculture fair[,] up to $7,000 on an equal matching basis for harness horse racing, with a maximum of $750 per race being matched by the department. To qualify, a fair shall meet the requirements set forth in 811 KAR 1:220.

(b) [regulations and specifications set for by 811 KAR Chapter 1] Harness racing payments shall also be disbursed in two (2) payments:

1. The first payment shall be [, the first being] one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of $3,500. This payment shall be combined with the fair's first agricultural payment.

2. The second harness racing payment shall be based on the amount of money spent in harness racing purses, up to a maximum of $7,000 less the first harness racing payment. It [, and] shall be included in the second fair payment. If [providing] the fair has included sufficient information on the [their] financial statement in regard to the harness racing results.

(4) The director of the department's show and fair program shall provide from the appropriation for county fairs a [an attractive] trophy that will be rotated and engraved and presented annually to the local fair that has made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department [and substantiated by other evidence].

Section 7. Building Program. (1) A qualified local agricultural fair may apply [make application] for an additional $3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. [Applications for the building program are due in the Division of Show] [Shows] [and Fair Promotion] [Fairs] [office no later than June 1 of the year that the work is to be completed, and it shall be preceded by a request for state aid application.] Grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. [The application form Request for State Aid for the Building Program is incorporated by reference. The form is effective October 12, 1990, and may be obtained at the Division of Show] [Shows] [and Fair Promotion] [Fairs,] 100 Fair Oaks, 5th Floor [Suite 252], [Frankfort, Kentucky 40601, during regular working

~~hours (from 8 a.m. to 4:30 p.m.)~~] Payments for facilities shall not result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog. [~~The provisions of this building program shall remain in effect.~~]

(2) The buildings and facilities shall be used primarily in conjunction with the qualified local agricultural fair and shall either be constructed on land **for which** owned by the local fair board or on land [~~that~~] the fair group holds a renewable lease.

(a) **The following shall be examples of items that may qualify for the building program:** [~~Some suggested items that may qualify are:~~]

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds;
2. The construction of new buildings;
3. Repair of any existing facilities on the fairgrounds;
4. Grandstands or bleachers used to seat people during the fair;
5. Grading and improvement work done to an existing track or show ring; **or** [~~and~~]
6. Loading chutes, wash racks or tie-outs for livestock.

(b) **An item** [~~Other items~~] not listed in paragraph (a) of this subsection may qualify for state assistance **if** [~~provided~~] the local fair provides evidence to the Department of Agriculture that the item meets the minimum **application** requirements [~~and is justifiable~~].

(3) **A qualified local agricultural fair shall apply for the building program by submitting the form Request for State Aid for the Building Program, after the fair has submitted its Initial Request for State Aid to Local Agricultural Fairs Form. The building program application shall be submitted** [~~Application for state assistance shall be made in writing by the qualified local agricultural fair~~] to the Division of Show [~~Shows~~] and Fair Promotion [~~Fairs,~~] Department of Agriculture, by June 1 of the year that the work is to be completed. The application shall include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Applications shall be available from the Department of Agriculture, Division of Show [~~Shows~~] and Fair Promotion [~~Fairs,~~] and shall be distributed after fair program applications are received or upon request.

(4) Upon acceptance of a qualified local fair's request for assistance by the Department of Agriculture, the local fair shall be supplied a **Financial Report of the Building Program** [~~financial report form~~]. The financial report shall contain a description of the buildings or improvements and an itemized cost. This [~~notarized~~] report shall be **notarized and** presented to the Division of Show [~~Shows~~] and Fair Promotion [~~Fairs~~] within forty-five (45) days following the completion of the building or repair work. **A report shall not** [~~No report shall~~] be accepted for payment after December 1 **of the year that the work is completed** without approval from the Kentucky Fair Council, **based on budgetary considerations**.

(5) Building program payments shall be disbursed in two (2) payments.

. (a) The [~~, with the~~] first payment **shall represent** [~~representing~~] one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of $1,500.

(b) The second building program **payment** [~~payments~~] shall be made after all financial statements and building reports have been received in the office of the Division of Show [~~Shows~~] and Fair Promotion [~~Fairs~~] and the total amount required for all grants is known. The second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.

Section 8. Grant Program. **(1) In addition to the Building Program established in Section 7 of this administrative regulation, a** [A] qualified local agricultural fair may **apply to the Grant Program** [~~make grant applications~~] yearly for land acquisition, capital construction of new buildings and facilities, infrastructure improvement to existing facilities, or the purchase of nonpermanent tangible items (i.e. bleachers, restaurant equipment, etc.) **A fair shall submit the Application to Qualify for County Fair Grant and the Grant Project application to the Division of Show and Fair Promotion. The applications** [~~Grants applications shall be made to the Division of Show and Fair Promotion and~~] shall be postmarked by October 1st of each year. Grant applications shall meet the following criteria:

(a) Grants shall **made a matching basis. The Kentucky Department of Agriculture shall provide seventy-five percent (75) percent, and the local fair shall provide twenty-five percent (25) percent, in either a monetary or in-kind match.** [~~be on a matching basis seventy five (75) - twenty five (25) with the local fair providing twenty-five (25) percent either monetary or inkind match.~~]

(b) The minimum amount eligible to be received **shall be** in $20,000. **The maximum amount received shall be** [~~with a maximum of~~] $100,000;

(c) The Fair Board shall be required to execute a **Memorandum** [~~memorandum~~] of Agreement with the Kentucky Department of Agriculture for the use of state funds;

(d) The Fair Board shall own the land or hold a long term lease on the property (twenty (20) years for capital construction and improvements or ten (10) years for non permanent tangible items). A copy of the deed or lease agreement shall be submitted;

(e) Grant applications **shall** [~~must~~] be accompanied by a development plan for capital construction and infrastructure. Applications for non permanent tangible items shall be accompanied by a statement of cost from the vendor;

(f) Changes to development plans (capital construction/infrastructure **after a grant is awarded** [~~when a grant is awarded~~] shall have prior approval from the Kentucky Department of Agriculture;

(g) All building/health permits (local and state) shall be obtained and provided to **the Division of Show and Fair Promotion** [~~grantor~~] for capital construction/infrastructure when a grant is awarded. If none are required an affidavit signed by local officials shall be provided;

(h) Awarded projects shall be started within ninety (90) days, **of the date the project is awarded** and completed within nine (9) months. Project extensions shall be made on a case by case basis, **based on reasonable assurance of project completion;**

(i) **Fairs** [~~Counties~~] shall make a full accounting **of all expenditures and receipts** of the completed project within ninety (90) days of completion;

(j) A fair that has been awarded a grant **shall** [~~will~~] be ineligible to apply **another grant for** [~~at least~~] three (3) years **from the date the previous grant was awarded.**

(2) The grants program shall be administered by the Kentucky Department of Agriculture's Division of Show and Fair promotion. The County Fair Coordinator shall review all applications for compliance. The grants shall then be presented to the Kentucky Fair Council for selection. The Fair Council shall select grant recipients until the yearly budget allocations have been met. The Fair Council may reject **a grant that does not meet the requirements established in this administrative regulation** [~~any or all grants~~]. The Division of Show and Fair Promotion shall monitor implementation **of** [~~of~~] awarded grants. Fairs that are awarded grants and fail to execute the projects shall be required to repay the grant.

Section 9. Effect of Overspending of Fair Program Budget. If the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions shall be made in payments as recommended by the **Fair Council** [~~fair council~~] and as determined by the Commissioner of Agriculture.

Section 10. Incorporation by Reference. [~~9.~~] (1) The following material is [~~documents are~~] incorporated by reference:

(a) "Initial Request for State Aid to Local Agricultural Fairs Form" (1995);

(b) "Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show and FairPromotion, Open Class Dairy and Beef Show Information Form" (1995);

(c) "Financial Report of the Building Program" (November 2006);

(d) "Request for State Aid for the Building Program" (November 2006);

(e) "Application to Qualify for County Fair Grant" (November 2006); and

(f) "Grant Project Application" (November 2006).

[(a) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show [Shows] and Fair Promotion [Fairs], Uniform Classes List;

(b) Initial Request for State Aid to Local Agricultural Fairs Form (1995);

(c) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show [Shows] and Fair Promotion [Fairs], Open class and Beef Show Information Form; and

(d) 1993 Charter Bylaws, Rules and regulations of the U.S. Trotting Association.]

(2) This material [The documents referred to in subsection (1) of this section] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Department of Agriculture, Division of Show and Fair Promotion, 100 Fair Oaks 5th Floor [Commissioner's Office, Capital Plaza Tower,] Frankfort, Kentucky 40601, Monday through Friday, [from] 8 a.m. to 4:30 p.m.[Monday through Friday.]

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: July 14, 2006

FILED WITH LRC: July 13, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21st, 2006 at 10 a.m. Eastern Time at the Kentucky Department of Agriculture, Commissioner's Office, 32 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this time hearing shall notify this agency in writing by August 14, 2006. 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 of comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2006. 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: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends 302 KAR 15:050 to provide more state aid to local fairs.

(b) The necessity of this administrative regulation: To provide additional state aid to local fairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides additional state aid to local fairs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will allow local fairs to expand and improve their facilities.

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

(a) How the amendment will change this existing administrative regulation: Provides additional state aid to local fairs.

(b) The necessity of the amendment to this administrative regulation. Regulation needs to be expanded to expend funds.

(c) How the amendment conforms to the content of the authorizing statutes: It will allow local fairs to expand and improve their facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: 108 County Fairs.

(4) Provide an analysis of how the entities identified in will have to take question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities in the question (3) will have to take to comply with this administrative regulation or amendment: The entities will be required to apply for funding, be an incorporated fair board pursuant to KRS 247.220 and meet the requirements of 302 KAR 15:010

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will be required to match the grant with a 25% monetary or inkind match.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying the entities will be eligible for grant funds.

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

(a) Initially: $495,000 annually.

(b) On a continuing basis: $495, 000 annually.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administration regulation, if new or by the change if it is an amendment: Continued funding will be required.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all local fairs will have equal opportunity to apply for funds.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No, fair boards are independently incorporated entities that establish rules and policies.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, October 10, 2006)

302 KAR 16:010. Permit for operation of amusement rides or amusement attractions in Kentucky.

RELATES TO: KRS 247.232, 247.234, 247.990

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations establishing [permit] requirements for the operation of amusement rides or attractions. This administrative regulation establishes the criteria for obtaining an operating permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Definitions. [Definition.] (1) [~~"Air-inflatable" means an amusement ride or amusement attraction that is filled with air by an electric motor-driven blower~~] [~~"Operating permit" means a license to operate amusement rides or amusement attractions~~].

[~~(2) "Chair lift or tram" means any amusement ride or amusement attraction that is operated by a series of cables and pulleys.~~

~~(3) "Climbing wall " means a portable self-belayed climbing attraction.~~

~~(4)~~] "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky and established in 302 KAR 16:020

~~(2) [(5) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.~~

~~(6) "Major ride" means any ride which has a height requirement of forty-three (43) inches or greater to ride and is not otherwise defined in this administrative regulation.~~

~~(7)~~] "Operating permit" means a business identification number identifying the owners of an amusement ride or amusement attraction.

[~~(8) "Play port" means an amusement ride or amusement attraction designed for use by children on which a child can swing, walk, climb, slide and which follows a fixed path.~~

~~(9) "Pony ride" means a amusement ride attached to a carousel.~~

~~(10) "Walk through" means a fun house, glass house, laser tag, or dark rides.~~

~~(11) "Water ride" means an amusement ride or amusement attraction which use water as a means of propulsion and includes bumper boats and water park slides which are in excess of ninety-six (96) inches at highest point of the slide.~~]

Section 2. An operating permit shall be required for operating amusement rides or amusement attractions in the state of Kentucky and shall be renewed annually on or before January 1 of each year.

Section 3. Procedure for Obtaining an Operating Permit. (1) Every owner of an amusement ride or amusement attraction wishing to operate in Kentucky shall submit to the commissioner, or his designee, an application for an operating permit accompanied by the fee required by 302 KAR 16:020[~~along with a fifty (50) dollar fee for each amusement ride or amusement attraction~~].

(2)(a)The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating:

1. The location of the first setup;

2. All future operating dates and locations, including addresses;

3. The operating period at each location; [,] and

4. All rides requiring initial inspections pursuant to KRS 247.234(2)(d).

(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing, within five (5) days, If [~~when~~] cancellations or additional locations occur.

(3) Except as provided in subsection (4) of this section, the [~~The~~] applicant shall provide proof of liability insurance in the amount of $500,000 [~~$300,000~~] per occurrence of bodily injury or death, for each amusement ride or amusement attraction.

(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner.

(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:

1. A listing of all amusement rides and amusement attractions insured; or

2. [~~or~~] A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered.

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, he may, in lieu of providing proof of liability insurance, [~~as set forth in Section 3(3) of this administrative regulation,~~] provide proof of financial responsibility in the sum of $500,000 [~~$100,000~~] on or before the date of the initial inspection of the calendar year. Proof of financial responsibility shall be shown by one of the following methods:

(a) Provide proof of liability insurance of $500,000 [~~$100,000~~] per occurrence of bodily injury or death;

(b) Submit a financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to receipt of the application, indicating a net worth of $500,000 [~~$100,000~~] or more in assets located in the state;

(c) [~~Obtain a bond with surety for $500,000 [$100,000] which names the department, or an individual or institution approved by the department, as trustee;~~

~~(d)~~] Tender an irrevocable letter of credit to the department in the sum of $500,000; [~~$100,000~~] or

(d) [~~(e)~~] Provide other proof of financial responsibility in the amount of $500,000 [~~$100,000~~], with accuracy attested to on forms incorporated by reference in Section 5 of this administrative regulation.

Section 4. Upon receipt of proper application, fees, proof of liability insurance or financial responsibility, and the required itinerary, [a] an operating permit shall be issued in the name of the applicant. The operating permit shall be available for inspection at all times. If the permit holder is operating in multiple locations, a photostatic copy of the operating permit shall be accepted.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Permit Application for Mobile Rides and Attractions", 03/03;

(b) "Permit Application for Permanent Fixed Locations", 03/03;

(c) "Itinerary of Mobile Operators", 03/03;

(d) "Itinerary of Permanent Fixed Locations", 03/03, and

(e) "Certification of Proof of Financial Responsibility", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: August 14, 2006

FILED WITH LRC: August 15, 2006 at 9 a m.

CONTACT PERSON: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, October 10, 2006)

302 KAR 16:020. Operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234, 247.236, 247.990

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2)(b) and (d) require the department to promulgate administrative regulations establishing inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the inspection fees. [KRS

~~247.234(d) authorizes the department to promulgate administrative regulations establishing safety requirements for the operation of amusement rides or attractions. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes inspection fees.~~]

Section 1. Definitions. (1) "Air inflatable" means an amusement ride or amusement attraction that is filled with air by an electric motor-driven blower.

(2) "Chair lift or aerial tramway" means an amusement ride or amusement attraction that is operated by a series of cables and pulleys.

(3) "Climbing wall" means a self-belayed climbing attraction.

(4) "Dark ride" means an amusement ride or amusement attraction which is enclosed and has the lights turned off during the duration of the ride.

(5) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle which travels the fixed path.

(6) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky, and established in this administrative regulation.

(7) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(8) "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(9) "Operating permit" means a business identification number identifying the owners of an amusement ride or amusement attraction.

(10) "Play port" means an amusement ride or amusement attraction designed for use by children on which a child can swing, walk, climb, or slide, and which follows a fixed path.

(11) "Pony ride" means an amusement ride attached to a nonmotor-powered mechanical wheel and powered by an animal of the equine species.

(12) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal substance.

(13) "Walk through" means a fun house, glass house, or laser tag.

(14) "Water ride" means an amusement ride or amusement attraction which uses water as a means of propulsion and includes bumper boats and water park slides which are in excess of ninety-six (96) inches at the highest point of the slide.

(15) "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2. (1) The operating permit shall not be valid for an amusement ride or amusement attraction [~~for which the fifty (50) dollar fee has not been paid or for an amusement ride or amusement~~ attraction] which has not passed an initial safety inspection and had [paid] the inspection fees paid as set out in Section 2 of [in] this administrative regulation.

(2) All amusement rides and amusement attractions operating in Kentucky shall bear an inspection seal. Following a safety inspection, an inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(3) If the required inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a valid inspection is provided. Amusement attraction shall [does] not include hay rides, all haunted houses, mazes, manual belayed climbing walls, and mechanical bulls [~~and permanent climbing walls~~].

Section 3. [~~2.~~] Inspection fees shall be levied for each amusement ride and amusement attraction. The inspection fees for:

(1) Air inflatables shall be fifty (50) dollars;[-]

(2) Pony rides shall be fifty (50) dollars;[-]

(3) Euro or turbo bungee shall be seventy-five (75) dollars; [-]

(4) Kiddie rides shall be seventy-five (75) dollars;[-]

(5) Play port shall be seventy-five (75) dollars;[-]

(6) Climbing walls shall be seventy-five (75) dollars;[-]

(7) Water rides shall be seventy-five (75) dollars;[-]

(8) Dark rides [~~Mechanical bulls~~] shall be seventy-five (75) dollars;[-]

(9) Walk throughs shall be seventy-five (75) dollars;[-]

(10) Tracked or trackless trains shall be $100.

(11) Go cart facility [~~tracks which include car and track~~] shall be $125; [-]

(12) Major rides shall be $150;[-]

(13) Chair lifts or aerial tramway [~~trams~~] shall be $200;[-]

(14) Steel roller coaster shall be $200; [-]

(15) Bungee or ejector seat shall be $200; [-]

(16) Wooden roller coaster shall be $300; and [-]

(17) Any amusement ride or amusement attraction not listed in this section shall be $150 [~~$200~~] [~~All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection can be completed~~]

Section 4. [~~3.~~] All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection can be completed.

Section 5. [~~4.~~] All amusement rides and amusement attractions shall be maintained in good electrical and mechanical condition and shall be under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 6. (1) [~~5.~~] [4.] All amusement rides and amusement attractions which are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders.

(2) A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings.

Section 7. (1) [~~6.~~] [~~5.~~] All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures.

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 8. [~~7.~~] [6.] Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions.

Section 9. [~~8.~~] [~~7.~~] The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, who are not wearing foot protection, such as shoes or secured sandals, or who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 10. [~~9.~~] [~~8.~~] To assure continued safety of amusement rides and amusement attractions, periodic safety inspections may be conducted at various times throughout the term of the permit.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: August 14, 2006

FILED WITH LRC: August 15, 2006 at 9 p m.

Contact person: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, October 10, 2006)

302 KAR 85:010. Requirements to establish fee schedules for calibrations, adjustments, weights and measures.

RELATES TO: KRS 363.590, 363.610.
STATUTORY AUTHORITY: 2006 Ky. Acts ch. 252, Part I, A.22(4), KRS 363.590(1), 363.610 [~~2005 Ky. Acts ch. 170, vol II, A. Government Operations Agriculture, at 2003~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(1) requires the director of the division of weights and measures to issue administrative regulations for the enforcement of KRS 363.510 to 363.850. KRS 363.610 authorizes the director to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. 2006 Ky. Acts ch. 252, Part I, A.22(4) authorizes the Department to promulgate administrative regulations establishing license fees, testing fees, and any other fees necessary to operate and maintain a metrology lab. [~~Under this authority, the Department of Agriculture sets the standards upon which all weights and measures in the Commonwealth are based. The metrology laboratory calibrates all standards (weights and volumetric measures) used in the department's inspection functions.~~] This administrative regulation requires the department to inspect all weighing and measuring devices for accuracy and allows establishment of a fee system for the calibration and adjustments to these weighing and measuring devices.

Section 1. Application. The department shall inspect and calibrate all weighing and measuring devices in accordance with KRS 363.610.

(1) Each weighing and measuring device inspected shall be charged the following calibration fees:

(a)

	MASS (lbs)			(weights)		
0-5	5 01-10	10.01-49	50-250	251-500	501-1000	1001-5000
$5 00	$7 50	$15 00	$20 00	$35 00	$50 00	$100 00

(b)

	VOLUME (gal)			(gas cans & provers)	
5	25	50	100	500	1000
$20	$ 35	$70	$50	$250	$400

(2) Each weighing and measuring device that is out of tolerance and requires adjustment shall be charged the following fee for adjustment:

	MASS (lbs.)			(weights)		
0-5	5 01-10	10.01-49	50-250	251-500	501-1000	1001-5000
$2 50	$2 50	$5 00	$5 00	$10 00	$20 00	$50 00

(a)

	VOLUME (gal)			(gas cans & provers)	
5	25	50	100	500	1000
$5 00	$5 00	$10 00	$25 00	$50 00	$100.00

(b) Three (3) Metric Equivalents shall be charged on the schedule established in subsections 1 and 2.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: July 14, 2006
FILED WITH LRC: July 13, 2006 at 4 p.m.
CONTACT PERSON: Mark Farrow, General Counsel, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 10, 2006)

501 KAR 6:240. Home incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 196, 197, 439, 532
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.346, 439.348, 439.470, 532.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole. The administrative regulation incorporates by reference the policies and procedures governing the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device October 10 [~~July 28~~], 2006[~~June 1, 2006~~]" are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates (Amended 10/10/06 [~~7/28/06~~][~~8/9/05~~])
27-15-02 Curfew and Monitoring (Amended 8/9/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 275 E. Main Street[~~2439 Lawrenceburg Road~~], P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-4276[~~(502) 564-2024~~], facsimile (502) 564-5037[~~(502) 564-6494~~], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: July 10, 2006
FILED WITH LRC: July 28, 2006 at 4 p.m.
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-5229.

TRANSPORTATION CABINET
Office of Budget and Fiscal Management
(As Amended at ARRS, October 11, 2006)

600 KAR 3:030. Relocation or reconstruction of utility and rail facilities; recordkeeping and audit requirements.

RELATES TO: KRS 177.035, 177.170, 177.430(5), 179.265, 23 C.F.R. 140, 645, 646, 48 C.F.R. 31
STATUTORY AUTHORITY: KRS 177.430(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.430(5) authorizes the cabinet to promulgate administrative regulations relating to utilities on a turnpike project. This administrative regulation establishes the audit methodology to be used by a cabinet auditor for auditing reimbursable expenses incurred by a railroad or utility under an agreement with the Transportation Cabinet; establishes the requirements for keeping financial records; and requires all utilities and railroads contracting with the cabinet to comply with the federal regulations.

Section 1. Utility's Eligible Costs. (1) The eligible costs a utility incurs in participating in a highway construction project by providing relocation or reconstruction of its facility shall be governed by 23 C.F.R. 645.

(2) [~~If the utility owner is a county or other local public agency, 23 C.F.R. 140, subpart G shall govern the eligibility of the costs of salaries, wages and other related costs incurred by its employees.~~

~~(3)~~] A cost not in compliance with [~~23 C.F.R. 140, Subpart G or~~] 23 C.F.R. 645 shall be disallowed.

Section 2. Railroad's Eligible Costs. (1) The eligible costs a railroad incurs in participating in a highway construction project by providing relocation, construction, or reconstruction of its facility or the elimination of a hazardous highway-rail crossing[,] shall be governed by 23 C.F.R. 646 and 23 C.F.R. 140, Subpart I.

(2) A cost not in compliance with 23 C.F.R. 140, Subpart I or 23 C.F.R. 646 shall be disallowed.

Section 3. Financial Records of a Utility or Railroad. (1) A railroad or utility shall provide the cabinet timely access to all financial and cost information necessary to verify the railroad's or utility's actual costs for the relocation, construction or reconstruction of its facilities directly associated with a cabinet project.

(2) A railroad or utility shall maintain payroll and time records for all employees for three (3) years from the final payment or until an audit has been performed, whichever is first.

(3) A utility or railroad which is required to relocate its facilities for a state-funded highway construction project shall maintain its records in accordance with the provisions of 48 C.F.R. 31.

(4) If a railroad or utility is notified by the Transportation Cabinet of a pending audit, the railroad or utility shall provide the following:

(a) Time sheets;
(b) Labor agreements;
(c) Vendor invoices;
(d) Equipment usage;
(e) Indirect cost analysis;
(f) Direct cost summary;
(g) Budgetary information;
(h) Betterment determination;
(i) Project-related employee expenses;
(j) Payroll register; and
(k) Cancelled payroll checks.

Section 4. Audit Standards. The Transportation Cabinet, if auditing a railroad or utility, shall abide by the accounting and auditing standards contained in the following:

(1) "Government Auditing Standards", 2003 [1998] Revision[";

(2) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)"; and

(3) "Original Pronouncements, Accounting Standards as of June 1, 2005 [1998], Volume I, [and] Volume II, and Volume III".

Section 5. Audit Findings. (1) Prior to the issuance of a final report, the auditor from the Transportation Cabinet shall present the preliminary findings and relevant work papers to the railroad or utility.

(2)(a) A comment about or objection to the preliminary findings shall be submitted to the originating office within the Transportation Cabinet in writing within fifteen (15) calendar days of the railroad's or utility's receipt of the preliminary findings.

(b) A comment or objection shall be taken into consideration by the external audit staff prior to finalizing the report.

(3)(a) If a railroad or utility disagrees with the results of a final report issued by the external audit staff, the railroad or utility may request a review by the External Audit Review Committee within thirty (30) calendar days of the date the final report is received by the utility or railroad.

(b) The request shall be in writing and clearly state the concern with the final report and the reason for the concern.

(c) If the concern and the reason are not clearly stated, the request for review shall not be accepted.

Section 6. External Audit Review Committee. (1) The External Audit Review Committee shall consist of the following:

(a) The Executive Director of the Office of Budget and [Commissioner of the Department of] Fiscal Management, Chairperson;

(b) Deputy State Highway Engineer for [Executive Director, Office of] Project Development; and

(c) Executive Director of the[,] Office of Legal Services [Policy and Budget, and

(d) General Counsel, Office of General Counsel].

(2) A committee member may appoint a proxy to serve on this committee.

(3) The External Audit Review Committee may request the utility, railroad or the auditor to answer questions. The request shall state if a representative is to appear in person, by electronic communication, or in writing.

(4)(a) If the railroad or utility is not satisfied with the decision of the Audit Review Committee, an appeal may be made to the Secretary of the Transportation Cabinet within thirty (30) calendar days of receipt of the committee's decision.

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 7. Incorporation [Material Adopted. (1) The following material is adopted:

(a) 23 C.F.R. 140, Subparts G and I, effective April 1, 1998;
(b) 23 C.F.R. 645, effective April 1, 1998;
(c) 23 C.F.R. 646, effective April 1, 1998; and
(d) 48 C.F.R. 31, effective October 1, 1998.

(2) This material may be viewed or copied at the Transportation Cabinet, External Audit Branch, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 8. Material Incorporated] by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards[, 1994 Revision]" by the Comptroller General of the United States, 2003 Revision;

(b) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", [copyright 1997] by the American Institute of Certified Public Accounts, Inc., copyright 2006; and

(c) "Original Pronouncements, Accounting Standards as of June 1, 2005 [1997], Volume I, [and] Volume II, and Volume III" published by the Financial Accounting Standards Board[;

(d) 63 Federal Register 58605, October 30, 1998; and
(e) 63 Federal Register 70287, December 18, 1998].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Transportation Cabinet Office Building, External Audit Branch, 200 Mero [3rd Floor, State Office Building, 501 High] Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBRA GABBARD, Executive Director
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006, at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:010. Definitions for [of terms used in] 600 KAR Chapter 6.

RELATES TO: KRS 45A.030, 45A.085, 45A.095, 45A.800-45A.835, 45A.838, 23 C.F.R. 172, 23 U.S.C. 112, 121
STATUTORY AUTHORITY: KRS 45A.838
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.838(1), (4)[(2)], and (5) require the Transportation Cabinet to promulgate administrative regulations relating to the establishment and operation of professional service firm pools. This administrative regulation establishes the definitions for terms used in 600 KAR Chapter 6.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" is [means as] defined in KRS 45A.030(2).

(4) "Competitive negotiation" means negotiations that meet the requirements established [as described] in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or engineering-related services for the cabinet as the prime or top-ranked firm in accordance with 600 KAR 6.060.

(6) "Continuous professional liability policy" means professional liability insurance coverage which is maintained without a gap in coverage in order to become and to remain prequalified with the Transportation Cabinet.

(7) "Contract" is [means as] defined in KRS 45A.030(7)[(5)].

(8) "Contract modification" is [means as] defined in KRS 45A.030(8)[(6)].

(9) "Cost per unit of work" means a price based on a unit if the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(10) "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for operating margin.

(11) "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(12) "Direct salary" means the salary of a person directly involved with and chargeable to a specific project, e.g., engineering or draftsperson [draftsman] time spent on a project.

(13) "Discipline" means an engineering or related service area with responsibility falling to a specific user division.

(14) "Engineer" is defined by KRS 45A.800(2).

(15) "Engineering-related services" is defined by KRS 45A.800(7).

(16) "Firm" is defined by KRS 45A.800(8).

(17) [means an individual or other entity which offers professional engineering or related services.

(15)] [(14)] "FHWA" means the Federal Highway Administration.

(18) [(16)] [(15)] "Lump sum" means a fixed price, including cost and operating margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(19) [(17)] [(16)] "Modification" means a formal revision to the terms of a contract.

(20) [(18)] [(17)] "Noncompetitive negotiation" means negotiations that meet the requirements established [as described] in KRS 45A.095.

(21) [(19)] [(18)] "Overhead costs" means an indirect cost that:

(a) Is not chargeable to a specific project; and

(b) Supports:

1. Personnel salaries;
2. Accounting;
3. General maintenance and repair;
4. Building rent;
5. Utilities;
6. Furniture; and
7. A similar cost related to conducting business.

(22) [(20)] [(19)] "Overhead submission packet" means a package of information containing a summary of the:

(a) Firm's overhead expense accounts;

(b) Direct and indirect labor; and

(c) Direct costs of items outlined in 600 KAR 6.080, Section 1(5)[(13)].

(23) [(21)] [(20)] "Pool" means a group of firms selected to provide engineering or engineering-related services.

(24) [(22)] [(21)] "Prequalification" means the evaluation of a professional:

(a) To determine if he or she is qualified to contract with the cabinet for engineering or engineering-[professional engineering or]related services; and

(b) By consideration of:

1. Financial capability;
2. Technical expertise;
3. Experience;
4. Past performance;
5. Management; and
6. Similar business factors.

(25) [(23)] [(22)] "Prequalification category" means a type of project for which engineering or engineering-[professional engineering or]related services are contracted.

(26) [(24)] [(23)] "Prime" or "top-ranked" means a consultant:

(a) Awarded a contract under 600 KAR 6:070; and

(b) Performing at least fifty (50) percent of the dollar value of the work for a project.

(27) [(25)] [(24)] "Principal" means an individual who:

(a) Owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm; or

(b) Serves as:

1. President;
2. Vice president;
3. Secretary;
4. Director; or
5. Another firm officer.

(28) [(26)] [(25)] "Project-specific professional liability insurance" means separate professional liability coverage which provides noncancelable coverage for the duration of a specific project and continuing through a discovery period after construction is complete.

[(27) [(26)] "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(28) [(27)] "Professional engineering or related services" means specialized engineering or related professional services performed by an individual, consultant, or other organization of recognized technical competence, education or experience that is involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.]

(29) [(28)] "Professional liability policy" means claims-made insurance coverage for engineering or engineering-[professional engineering or]related services which indemnifies a firm, a past or present partner, an officer, a director, a stockholder, or an employee while acting within the scope of firm duties, against the following:

(a) A negligent act;

(b) An error or omission in performing a professional service; or

(c) Failure to provide a service in accordance with standard of care.

(30) [(29)] "Professional services" means specialized services performed by an individual or consultant of recognized technical competence.

(31) [(30)] "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(32) [(31)] "Project manager" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(33) [(32)] "Proof of necessity" means the justification to employ an [a]:

(a) Engineer;
(b) Architect;
(c) Appraiser;
(d) Attorney; or
(e) Other professional.

(34) [(33)] "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(35) [(34)] "Salary additives" means an employer-paid fringe benefit, including:

(a) The employer portion of FICA;
(b) Health insurance;
(c) Group life insurance;
(d) A state unemployment contribution; or
(e) A similar employee benefit.

(36) [(35)] "Scope of work" means all services and actions required of the consultant by the contract.

(37) [(36)] "Services" is [means as] defined in KRS 45A.030(24) [(19)].

(38) [(37)] "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.440 [176.470].

(39) [(38)] "Standard of care" means the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the

same or similar circumstances.

(40) [(39)] "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(41) [(40)] "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(42) [(41)] "User division" is [means as] defined in KRS 45A.800(6).

(43) [(42)] "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:030. Federal requirements for contracts for engineering or engineering-related services.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 49 C.F.R. 18[, 23 U.S.C.]
STATUTORY AUTHORITY: KRS 45A.807(2) [45A.800-45A.835], 23 C.F.R. 172, 49 C.F.R. 18[, 23 U.S.C.]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement the procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes [sets forth] the federal requirements to be followed by the Transportation Cabinet relating to contracts [when contracting] for engineering or engineering-[professional engineering or]related services.

Section 1. Federal Regulatory Requirements. (1) If a highway project is funded in part by federal-aid funds, the cabinet shall be regulated by Title 23 of the United States Code and by [the Code of Federal Regulations] 23 C.F.R. 172 and 49 C.F.R. 18 in regard to the selection of a consultant.

(2) The cabinet shall submit justification and receive approval from the FHWA before using the noncompetitive negotiated method of contracting if [when] federal-aid highway funds are used in the contract. A contract in which federal-aid highway funds may be awarded by noncompetitive negotiation shall be limited to contracts for which FHWA approval has been received if [the following].

(a) The service is available only from a single source;

(b) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(c) After solicitation of a number of sources, competition is determined to be inadequate.

[(3) The following material is adopted without change:

(a) 23 C.F.R. 172, with an effective date of January 17, 1995; and

(b) 49 C.F.R. 18, with an effective date of May 19, 1995.

(4) The material adopted in this administrative regulation may be viewed, copied, or obtained from the Staff Assistant, Office of the Secretary, Room 1003, State Office Building, Frankfort, Kentucky 40622 between the hours of 8 a.m. and 4:30 p.m. on weekdays.]

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:040. Prequalification of firms for engineering or engineering-[professional engineering or]related services.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 49 C.F.R. 18, 23 U.S.C.
STATUTORY AUTHORITY: KRS [13A.100(1), 45A.800-45A.835,] 45A.807(2), 23 C.F.R. 172, 49 C.F.R. 18, 23 U.S.C.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related services pursuant to KRS 45A.800 to 45A.835. This administrative regulation sets forth the procedure and standards for the prequalification of firms for engineering or engineering-[professional engineering or]related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Application for Prequalification for Engineering or Engineering-[Professional Engineering or]related Services. (1) A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired, as follows:

(a) Consulting Engineer and Related Services Prequalification Application;

(b) Prequalification Requirements for Geotechnical Drilling Services;

(c) Prequalification Requirements for Geotechnical Engineering Services; or

(d) Prequalification Requirements for Geotechnical Laboratory Services

(2)(a) A firm desiring to be considered for an award as a prime shall provide an original certificate of a continuous professional liability policy in an amount not less than $1,000,000 with the application.

(b) A certificate of self-insurance shall not be accepted by the Transportation Cabinet.

(3) The completed prequalification form and original certificate of a continuous professional liability policy shall be submitted to the division of Program Performance [Professional Services], Transportation Cabinet Office Building, 200 Mero Street [6th Floor, Room 610, State Office Building, 501 High Street], Frankfort, Kentucky 40622.

(4) If a prequalified firm ceases to exist or ceases to provide engineering services as a prime, it shall continue to maintain a minimum of $1,000,000 in professional liability insurance for a project that was designed by the firm for two (2) years beyond the date the project was opened to traffic.

(5) A firm shall have filed the proof of professional liability insurance required by subsection (2)(a) [(1)] of this section in order to submit a proposal on a project to the Transportation Cabinet.

Section 2. Evaluation of Applications for Prequalification. (1) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category.

(2) The division of Program Performance [Professional Services] shall review and maintain the original certificate of continuous professional liability policy for each firm desiring prequalification as a prime.

(3) The criteria for prequalification to be used by the user divisions and offices shall be the criteria [are] listed in the Appendix to the Consulting Engineer and Related Services Prequalification Application [as adopted June 2004] [October 1995] [which is in-

~~corporated by reference in Section 8 of this administrative regulation~~].

(4) The head of the user division or office shall notify the division of Program Performance [~~Professional Services~~] of its evaluation results.

(5)(a) The Transportation Cabinet may verify the financial and other information included in the application of a firm.

(b) Verification **shall** [~~may~~] be accomplished in the same manner as an audit performed pursuant to 600 KAR 6.080.

(6)(a) The division of Program Performance [~~Professional Services~~] shall notify each firm of all evaluation results involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 6 of this administrative regulation.

Section 3. Annual Requalification. (1)**(a)** A prequalified firm shall annually submit the following to the division of Program Performance [~~Professional Services~~][~~: (a)~~] on or prior to its anniversary dates of prequalification:

1. **Application for Prequalification for Engineering or Engineering-related Services. A firm desiring requalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired** [~~Qualification and performance data~~]; and

2. An original certificate of continuous professional liability policy in an amount not less than $1,000,000.[~~; and~~]

(b) Within five (5) months of the end of the firm's fiscal year, an updated overhead submission packet **shall be submitted to the Division of Audits External Audit Branch. The overhead package shall include the following business records that each firm keeps during the regular course of business activities:**

1. Schedule of Indirect Costs;

2. Schedule of Employees, Pay Rates, and Job Classifications;

3. Payroll register for the current year;

4. Detailed General Ledger for the audit period; and

5. Certified or Audited Financial Statement for the audit period.

(2) The annual application shall include a completed set of the appropriate qualification forms and a copy of the firm's current marketing brochure, if one exists, for each functional area for which the firm is requesting prequalification.

(3) Failure to submit the completed forms or the original certificate of a continuous professional liability policy in a timely manner shall cause the removal of the firm's prequalification status.

(4) The annual renewal application shall be evaluated in accordance with the provisions of Section 2 of this administrative regulation.

Section 4. Changes in Firm. (1) A prequalified firm shall notify the division of Program Performance [~~Professional Services~~] of the following:

(a) A major change either increasing or decreasing the firm's professional or financial qualifications, capabilities, or personnel; or

(b) A change in:

1. The address of the firm;

2. **The** name of the firm;

3. The continuous professional liability policy on file with the division of Program Performance [~~Professional Services~~]; or

4. Another of the major qualification criteria.

(2) The user division or office shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

(3)(a) If a prequalified firm fails to notify the division of Program Performance [~~Professional Services~~] of a change of the address, it may be removed from the list of prequalified firms until it notifies the division of its new address.

(b) If the change of address notification is submitted to the division of Professional Services **prior to the firm's annual prequalification date** [~~during what would have been the firm's prequalification year~~] and no other changes have occurred in the firm, the firm shall be restored to the list of prequalified firms.

(c) Removal from the list of prequalified firms pursuant to this subsection[,] shall not be a basis for appeal under the provisions of Section 6 of this administrative regulation.

Section 5. Removal from List of Prequalified Firms. (1) A firm may be removed from the list of prequalified firms by the Consultant Prequalification Committee for any of the following reasons:

(a) Failure to submit an annual application on the firm's anniversary date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of any project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

(f) Failure to have a current license from the Kentucky **State Board of Licensure for Professional Engineers and Land Surveyors** [~~Professional Board of Registration~~];

(g) Failure to notify the Transportation Cabinet of the loss of personnel which has an impact on the firm's prequalification or project management within thirty (30) days;

(h) Violation of the firm's certification that the firm's owner, principals or partners, or any family member having an interest of ten (10) percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) to the gubernatorial campaign of the current governor;

(i) Failure to maintain with the division of Program Performance [~~Professional Services~~] a current certificate of a continuous professional liability policy in an amount not less than $1,000,000;

(j) Failure to annually submit an up-to-date overhead submission packet to the division of **Audits** [~~Program Performance~~] [~~Professional Services~~];

(k) Failure to perform on a project in a manner acceptable to the Transportation Cabinet; or

(l) Failure to provide access to the information required by 600 KAR 6:080.

(2) The Chairperson of the Prequalification Committee shall notify the firm in writing of its proposed removal from the list of prequalified **firms.** [~~firm and~~] the reason for the proposed removal **and the appeals procedure established in Section 6 of this administrative regulation**.

Section 6. Appeal Procedure for Firms Not Prequalified or Removed from Prequalified List. (1) The cabinet shall establish a permanent Consultant Prequalification Committee to evaluate the statements of qualifications of firms which appeal a disapproval rating or removal from the list of prequalified firms.

(2) The members of the Consultant Prequalification Committee shall be the following**, or the member's designee**:

(a) Director, division of Program Performance [~~or designee~~] [~~Professional Services~~], Chairperson;

(b) [~~Commissioner, Department of Aviation~~] [~~Director, division of Aeronautics~~][~~, (c)~~] Director, division of Traffic Operations;

(c) [~~(d)~~] Director, division of Highway Design;

(d) [~~(e)~~] Director, division of Structural [~~Bridge~~] Design;

(e) [~~(f)~~] Director, division of Materials;

(f) [~~(g)~~] Director, division of [~~Transportation~~] Planning;

(g) [~~(h)~~] Director, division of Environmental Analysis;

(h) [~~(i)~~] Director, division of Maintenance [~~Operations~~]; and

(i) [~~(j)~~] Director, division of Construction [~~, and~~

~~(k) Director, division of Multimodal Programs~~].

(3) A firm may appeal a disapproval relating to its request for approval of a prequalification category pursuant to Section 2 of this administrative regulation.

(4) A firm may appeal its removal from the list of prequalified firms pursuant to Section 5 of this administrative regulation.

(5) An appeal pursuant to this section of this administrative regulation shall be made in writing to the Chairperson of the Consultant Prequalification Committee within thirty (30) days of notification of the action of the Transportation Cabinet.

(6) The basis of the appeal and the relief sought shall be stated in the written communication to the chairperson.

(7)(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and shall make a decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(8) The committee shall notify the State Highway Engineer and the firm of its decision.

(9) If the firm's appeal is denied by the committee, the firm may appeal the decision within thirty (30) days of written notice:

(a) Relating to nonqualification to the State Highway Engineer; or

(b) Relating to removal from the list of prequalified firms to the Secretary of the Transportation Cabinet.

(10) The State Highway Engineer or Transportation Cabinet Secretary, as appropriate, shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer or Transportation Cabinet Secretary shall be final.

Section 7. Conditional Prequalification. (1) The user division or office or Consultant Prequalification Committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel who have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 1 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1E, April 2006, [October 1995] edition;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, May 2005 [April 2000] edition;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, May 2005 [April 2000] edition;

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, May 2005 [April 2000]; [and]

(e) Appendix to the Consulting Engineer and Related Services Prequalification Application, June 2004 [May 1998] edition; and

(f) Application for Prequalification for Professional Engineering or Related Services, TC 40-1e, Rev. 4/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the division of Program Performance [Professional Services], Transportation Cabinet Office Building [6th Floor State Office Building], 200 Mero Street [501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary

APPROVED BY AGENCY: July 13, 2006

FILED WITH LRC: July 13, 2006 at 3 p m.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or engineering-related services.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 23 U.S C. sec. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2), 23 U.S.C. sec. 112(b)(2), 23 C.F.R. 172(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes the procedure to be used by the Transportation Cabinet for [when] issuing public notice of the need for engineering or engineering-related services in accordance with [professional engineering or related services while implementing the provisions of] KRS 45A 800 to 45A.835.

Section 1. Preparation of a Procurement Bulletin. (1) If [When] the Transportation Cabinet has need of engineering or engineering-related services, it shall prepare a procurement bulletin announcing its intentions.

(2) A procurement bulletin prepared by the cabinet shall include a request for proposal for each project anticipated being contracted during a specified period of time. The request for proposal shall include [which includes] the following:

(a) The general scope of the project as provided by the user division;

(b) A discussion of procedures to follow for submission of a proposal on the project;

(c) An anticipated project schedule as provided by the user division;

(d) Any requirements for DBE utilization;

(e) Deadline for filing a response;

(f) The evaluation factors and their relative weights on which a response shall be evaluated by the Selection Committee;

(g) A timetable for the selection committee's meetings for the project;

(h) A list of all firms prequalified pursuant to 600 KAR 6:040 in each applicable category as of the date of the bulletin;

(i) A list of the firms prequalified pursuant to 600 KAR 6:040 and certified as a DBE as of the date of the bulletin;

(j) If established in advance by the State Highway Engineer, the maximum fee for consultant services for the project;

(k) If appropriate, the item numbers from the "six (6) year plan"; and

(l) The items required by KRS 45A.825(2)(b).

(3) A copy of the procurement bulletin shall be made available to each firm prequalified in a category to perform engineering or engineering-related services for the cabinet.

(4) The procurement bulletin may require the initial solicitation of a complete work price and qualification proposal.

(5) A procurement bulletin for statewide engineering or engineering-related services may specify that more than one (1) firm may be selected to provide the services requested in the bulletin.

(6)(a) The user division or office shall recommend the evaluation factors and relative weights to the Transportation Cabinet Secretary. Unless unique or particularly complex circumstances exist, the evaluation factors shall be selected from the list established in this paragraph. The Transportation Cabinet Secretary, or designee, shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of a professional firm for engineering or engineering-related services. The evaluation factors shall include the: [related services.]

1. Relative experience of professional personnel assigned to the project team with highway projects or projects on another mode of transportation or intermodal transportation projects for:

a. The Kentucky Transportation Cabinet; or

b. Federal, local or other state governmental agencies;
2. Capacity to comply with the project schedule;
3. Past record of performance on a project of similar type and complexity;
4. Project approach and proposed procedures to accomplish the services for the project;
5. Location where the work will be performed;
6. Special or unique expertise;
7. Special or unique equipment; and
8. Familiarity with geographic areas and resources.

(b) The weighting of each factor shall be published in the announcement for the specific project

(7) In addition to publishing a procurement bulletin, the cabinet may place an advertisement of the cabinet's need for engineering or engineering-related services and availability of the procurement bulletin in two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

Section 2. Response to Procurement Bulletin. (1) A prequalified firm responding to a procurement bulletin for engineering or engineering-related services shall submit to the Division of Program Performance [Professional Services] the [following: (a) The] number of copies of a completed Response to Kentucky Transportation Cabinet's Announcement for Engineering and Engineering-related Services as [Prime Consultant, form TC 40-15] specified in the procurement bulletin[; and

(b) The letter required by KRS 45A.825(3)].

(2) [A prequalified firm responding to a procurement bulletin for construction related engineering services shall submit to the Division of Professional Services, in addition to the items in subsection (1) of this section, the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7.

(3) As part of its response to a procurement bulletin, a prequalified firm which proposes to employ a subconsultant shall submit to the Division of Professional Services, in addition to the other items required by this section, the Subconsultant Qualifications for Response to Announcement for Engineering and Related Services, form TC 40-15-SUB

(4)] A firm or proposed subconsultant that is not prequalified in the specified areas of prequalification prior to the response due date published in the announcement of the need for engineering or engineering-related services for a particular project, shall not be considered for selection.

(3)[(5)](a) The Director, Division of Program Performance, or designee, [Professional Services], shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate Professional Engineering Services Selection Committee

(b) A response received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) A response received with fewer copies of the response than required by subsection (1)(a) of this section shall be returned to the firm and shall not be listed for consideration to perform the project.

(d) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and the Division of Program Performance or designee [Professional Services] receives notification indicating that the LRC Government Contract Review Committee has received the contract and project information for review as set forth in 600 KAR 6.070.

Section 3. Incorporation by Reference. (1) "Response to Kentucky Transportation Cabinet's Announcement for Engineering and Engineering-related Services", May 2006 edition, [The following material] is incorporated by reference [:

(a) "Response to Announcement for Engineering and Related Services as Prime Consultant," Form TC 40-15, July 1994 edition;

(b) "Supplemental Information in Response to Announcement for Construction Services," Form TC 40-7, June 1992 edition; and

(c) "Subconsultant Qualifications for Response to Announcement for Engineering and Related Services," Form TC 40-15-SUB, July 1994 edition.]

(2) This material may be inspected [inspection], copied, or obtained, subject to applicable copyright law, at the division of Program Performance [Professional Services], 200 Mero Street [6th Floor State Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. and 4:30 p.m.

MARC D. WILLIAMS, P.E.
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:060. Professional Engineering and Engineering-related Service Selection Committee.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 23 U.S.C. [sec.] 112(b)(2)
STATUTORY AUTHORITY: KRS 45A.807(2), 23 C.F.R. 172(1), 23 U.S.C. 112(b)(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes the procedure to be used by the Transportation Cabinet when selecting engineering or engineering-[professional engineering or]related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Establishing a Professional Engineering and Engineering-related Services Selection Committee. (1) A Professional Engineering and Engineering-related Services Selection Committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)(a) The Transportation Cabinet Secretary, or designee, shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The Transportation Cabinet Secretary, or [his] designee, shall review all applications from which the secretary shall appoint [select] six (6) professional engineers to serve in the pool for a period of one (1) year.

(c) The six (6) appointees shall meet the requirements established in KRS 45A.810(5)(a).

(d) A person serving on the Professional Engineering and Engineering-related Services Selection Committee from this pool shall not be eligible to serve on the same selection committee as a representative of a user division as specified by KRS 45A.810(5)(b).

(3)(a) The director of the user division responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located In accordance with KRS 45A.810(5)(b).

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) employees who have familiarity and experience related to the services that are being contracted.

(c) The director may appoint himself or herself to the committee.

(d) [If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the division of Program Performance or designee] [Professional Services][, each co-user division shall appoint one (1) member to the selection committee.

(e)] If the cabinet is procuring engineering or engineering-[professional engineering or]related services in conjunction with

another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not involuntarily serve as a member of a Professional Engineering **and Engineering-related** Services Selection Committee.

(5) Each member of a Professional Engineering **and Engineering-related** Services Selection Committee shall complete, sign, and return to the committee the following forms:

(a) Form TC 40-9E, Certification of Understanding of Restrictions for Members of Professional Engineering **and Engineering-**[~~or~~]related Services Selection Committee;

(b) Form TC 40-6, "Ex Parte" Disclosure;

(c) Form TC 40-4, Certification of Confidentiality; and

(d) Form TC 40-10, Certification of Conformity with Procurement Process.

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c), is an employee of a consulting firm, that consulting firm shall not be considered for a project which is reviewed by that selection committee.

(b) If a firm submitted a response under the circumstance identified in paragraph (a) of this subsection, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) After issuing approval to advertise for a consultant to perform **engineering or engineering-**[~~professional engineering or~~]related services, the secretary of the cabinet, or [~~his~~] designee, shall establish a Professional Engineering **and Engineering-related** Services Selection Committee for each project.

(8) The Division of Program Performance [~~Professional Services~~] shall provide each Professional Engineering **and Engineering-related** Services Selection Committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a Professional Engineering **and Engineering-related** Services Selection Committee shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall comply with the cabinet's Official Order Number **102295** [~~94992~~] regarding conflicts of interest.

Section 2. Operation of a Professional Engineering **and Engineering-related** Services Selection Committee. (1)(a) Meetings of a Professional Engineering **and Engineering-related** Services Selection Committee shall be called by the Division of Program Performance [~~Professional Services~~].

(b) The quorum for meetings shall be three (3) [~~four (4)~~] of the five (5) voting members. Each quorum shall include at least one (1) member appointed by the user division responsible for monitoring the professional services.

(2) Subsequent meetings.

(a) **If needed,** a subsequent meeting of a Professional Engineering **and Engineering-related** Services Selection Committee **shall be called**:

1. [~~May be called~~] By the chairperson at a mutually convenient time; or

2. [~~Shall be called~~] Upon a consensus of three (3) [~~four (4)~~] of the five (5) voting members of the selection committee.

(b) A motion or decision of the selection committee shall require a simple majority affirmative vote of all members present for passage.

(c) [~~Except as provided in subsection (1)(b)1 of this section, a quorum shall be constituted by four (4) of the five (5) voting members present.~~

~~(d)~~] Voting by proxy shall not be allowed.

(3)(a) The Professional Engineering **and Engineering-related** Services Selection Committee shall give fair and impartial consideration to each response certified in accordance with KRS 45A.825(5).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen each certified firm response.

(c) Prior to the selection committee determining the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin.

(4) In an executive session pursuant to the requirements established in subsections (5) through (13) of this section, the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)(a) Each committee member shall list the three (3) firms he or she ranked highest.

(b) Each firm included in a list prepared by a committee member shall be placed on the short list of firms.

(6)(a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications, the quality of their proposals, and the evaluation factors.

(b) Each committee member shall be given the opportunity to provide insight into the reasons for selecting or not selecting each firm for the project.

(c) A firm shall be eliminated from further consideration by consensus of the selection committee members.

(7)(a) Each firm remaining under consideration after the discussion period established in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.

(b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.

(c) A firm shall be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process established in subsection (7) of this section, more than three (3) firms remain under consideration, the process established in subsection (7) of this section shall be repeated until three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection (8) of this section shall be individually ranked by the committee members using secret ballots.

(10)(a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.

(b) If there is a tie ranking and if one of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.

(c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions established in subsection (7) of this section until the tie is broken.

(11) If the selection committee elects, it may interview a responding firm to aid in its determination of the best qualified firm.

(12) For a selection committee review involving statewide services advertised in accordance with Section 1(5) of 600 KAR 6.050, the committee shall rank:

(a) The top three (3) firms; or

(b) If more than three (3) firms are specified in the procurement bulletin, the number of firms specified in the bulletin.

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)(a) The Chairperson of the Professional Engineering **and Engineering-related** Services Selection Committee shall notify the Director of the Division of Program Performance, or designee, [~~Professional Services~~] of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Program Performance [~~Professional Services~~] shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Program Performance [~~Professional Services~~] shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification of Understanding of Restrictions for Members of Professional Engineering **and Engineering-**[~~or~~]Related Services Selection Committee", Form TC 40-9E, effective April 2006 [~~January 1998~~];

(b) "Ex Parte" Disclosure, Form TC 40-6, effective September 1998;

(c) "Certification of Confidentiality", Form TC 40-4, effective September 1998;

(d) "Certification of Conformity with Procurement Process", Form TC 40-10, effective January 1997; and

(e) The Transportation Cabinet's Official Order Number 102295 [94902] regarding Conflict of Interest, June 15, 2004 [May 21, 1993] edition.

(2) This material may be inspected [inspection], copied, or obtained, subject to applicable copyright law, at the Division of Program Performance [Professional Services], Transportation Cabinet Office Building, 200 Mero Street [6th Floor State Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to [and] 4:30 p.m.

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON. Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:065. Pooling of engineering or engineering-[professional engineering or]related services.

RELATES TO: KRS 45A.800-45A.835, 45A.838, 23 C.F.R 172, 23 U.S.C. 112, 121, 304, 315
STATUTORY AUTHORITY: KRS 45A.838
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.838 requires the Transportation Cabinet to promulgate administrative regulations relating to the establishment and operation of a pool of firms to provide professional contract services. This administrative regulation establishes [sets forth] the procedure to be used by the Transportation Cabinet if [when] pooling firms as it relates to engineering or engineering-[professional engineering or]related services.

Section 1. Project Types Utilizing Pooling of Engineering or Engineering-related Services. (1) The following project types shall utilize a pool of firms to provide the engineering or engineering-related services:

(a) Transportation planning;
(b) [(2)] Structure design;
(c) [(3)] Aeronautics;
(d) [(4)] Traffic engineering;
(e) [(5)] Environmental services;
(f) [(6)] Geotechnical services;
(g) [(7)] Bridge maintenance services;
(h) [(8)] Construction engineering services;
(i) [(9)] Multimodal,
(j) [(10)] Road design[:
(a) The use of a consultant pool for a road design project shall be limited to ten (10) percent of the total number of road design projects advertised for engineering services in the prior fiscal year.
(b) The total design fees for road design projects shall not exceed $2,000,000 in a fiscal year], and
(k) [(11)] Similar highway related services.

Section 2. Procedures and Criteria for Qualifying and Selecting Pooled Firms. (1) The cabinet shall notify a prequalified firm of the establishment of an individual pool by posting a procurement bulletin on the cabinet's web page.

(2) To be considered for selection in a pool,[(a)] a firm shall submit a completed [TC Form 40-15] "Response to Kentucky Transportation Cabinet's Announcement for Engineering and Related Services[as Prime Consultant]", which[; and
(b) The completed "Response to Kentucky Transportation Cabinet's Announcement for Engineering and Related Services"] [TC Form 40-15] shall be received by the date listed on the advertised procurement bulletin.

(3) The remainder of the selection process shall proceed according to KRS 45A.800 through 45A.835.

Section 3. Project Assignment for Pool Firms. (1)(a) A selected firm shall be placed in the pool.

(b) A firm name shall be:
1. Randomly drawn from the pool; and
2. Listed in consecutive order.

(c) A project shall be offered to the firm on a rotating basis

(d) A firm shall not be offered an additional project until the remaining firms on the list have been offered a project.

(2) If a firm declines to accept a project, that firm shall not be eligible to accept another project until the remaining firms on the list have been offered a project.

(3) If a firm declines a project or does not respond to an invitation to perform services for a project within seven (7) working days of the dated notification letter, documentation shall be placed in the project files and the next firm on the list shall be offered the project.

Section 4. Projects Grouped by Geographic Area. (1) The selection committee shall assign projects which are grouped based on geographical areas.

(2) The geographical area of the project shall be:
(a) Included in the advertisement for services; and
(b) Defined by the cabinet.

(3) The selection committee shall assign a selected firm to a geographical area.

Section 5. Incorporation by Reference. (1) "Response to Kentucky Transportation Cabinet's Announcement for Engineering and Related Services [as Prime Consultant]", [(]May 2006[June, 1993], Edition[)] is incorporated by reference [Transportation Cabinet].

(2) This material [It] may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Program Performance, 200 Mero Street [State Office Building], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:070. Contracting for engineering or engineering-[professional engineering or]related services.

RELATES TO: KRS 45A.800-45A.835, 45A.838, 23 C.F.R. 172, 23 U.S.C. 112, 121, 304, 315
STATUTORY AUTHORITY: KRS 45A.807(2), 45A.838
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related services pursuant to KRS 45A.800 to 45A.835. KRS 45A.838 requires the cabinet to promulgate administrative regulations to establish requirements for establishing and operating a pool of firms to provide professional contract services. This administrative regulation sets forth the procedure to be used by the Transportation Cabinet to select engineering or engineering-[when selecting

~~professional engineering or~~]related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Methods of Contracting with Consultants. (1) The following methods of contracting with a consultant **shall** [~~may~~] be used:

(a) Lump sum;

(b) Cost plus a fixed fee;

(c) Specific rate of compensation; [~~or~~]

(d) Cost per unit of work; **or**

(e) Other contract method approved by FHWA.

(2)(a) If the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Program Performance [~~Professional Services~~] showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Program Performance [~~Professional Services~~] and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;

2. The extent, scope, complexity, character and duration of the required services;

3. Professional and financial investments to be required of the consultant;

4. The consultant's normally-expected return for services;

5. Conditions under which the consultant is expected to perform;

6. The cabinet's estimate of the appropriate amount for the services required, and

7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) If the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which shall not be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Program Performance [~~Professional Services~~] or other negotiation unit shall establish the fixed fee and an upper limit based on:

1. Past experience gained from negotiations of similar projects;

2. Judgment regarding scheduling; [~~and~~]

3. Complexity of work; and

4. User division's estimate.

(4)(a) If the cabinet chooses the specific rate of compensation method of contracting, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit if the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;

2. Conditions under which the work is required to be performed; or

3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants that adjustment.

(c) **For a** [~~In the case of~~] statewide **agreement** [~~agreements~~] under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Government Contract Review Committee. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) If the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) Cost per unit contracting shall be appropriate for use if:

1. The extent of the work cannot be accurately figured; and

2. The cost of the work per unit can be determined with reasonable accuracy in advance.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1)(a) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(b) The Transportation Cabinet may require a consultant to obtain project-specific professional liability insurance for an unusual project.

(c) If project-specific professional liability insurance is required.

1. A firm's audit may be reexamined to determine if a change in the overhead rate is needed; or

2. **The consultants may jointly purchase the insurance if there is more than one (1) consultant involved in the project** [~~And there is more than one (1) consultant involved in the project, the consultants may jointly purchase the insurance~~].

(2)**(a)** After this prenegotiation meeting, the consultant shall submit the following to the cabinet:

1. [~~(a)~~] Official minutes of the prenegotiation meeting; and

2. [~~(b)~~] All required tasks and work units.

(b) [~~1.~~] The cabinet shall have the following options regarding the submittal:

1. [~~a.~~] Concur;

2. [~~b.~~] Modify and return the modification to the consultant; or

3. [~~c.~~] Reject and ask the consultant to evaluate and resubmit the work units.

[~~2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.~~]

(3) The consultant shall submit to the Division of Program Performance [~~Professional Services~~] a fair and reasonable fee proposal which shall include [~~be prepared using~~] the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), **and** (6)[~~, (7), and (8)~~] of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Program Performance [~~Professional Services~~] requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Program Performance [~~Professional Services~~] in negotiation of the contract; **and**[~~,~~]

(d) Submit an independent person-hour estimate for each discipline in which the firm's fee proposal exceeds 500 person-hours.

(5) [(a) ~~Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;~~

~~(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the limitations in 600 KAR 6:080, Section 2, shall be suspended and the allowable overhead rate may exceed 150 percent if:~~

~~1. The director of the Division of Professional Services recommends approval;~~

~~2. The State Highway Engineer recommends approval;~~

~~3. The Secretary of the Transportation Cabinet approves; and~~

~~4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 C.F.R. Part 31.~~

~~(6)~~] For contract negotiation purposes, travel expenses for a consultant employee or survey crew shall be limited to those incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office.[;]

(6) [~~(7)~~] For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

(a) Reimbursement rates for travel expenses related to mileage shall be the twelve-month average of reimbursement rates in accordance with the provisions of 200 KAR 2:006 beginning January 1st and ending December 31st;

(b) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(c) Special equipment which is project-specific;

(d) Capital cost of money;

(e) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour; and

(f) Travel time for survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives.

[~~(8) For contract negotiation purposes:~~

~~(a) The maximum compensation for a principal or a partner of a firm shall not exceed forty-eight (48) dollars and seven (7) cents per hour with a maximum total of $100,000 per year; and~~

~~(b) The maximum compensation for a nonprincipal or nonpartner of a firm shall not exceed forty-three (43) dollars and twenty-seven (27) cents per hour with a maximum total of $90,000 per year.~~]

Section 3. Contract Negotiations. (1)(a) The Division of Program Performance [~~Professional Services~~] shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If **engineering or engineering-**[~~professional engineering or~~]related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division **shall designate the negotiating agent** [~~may~~] [~~shall~~] [~~be responsible for negotiating the fee~~].

(2)(a) The Division of Program Performance [~~Professional Services~~] or other designated negotiation unit shall receive the proposal and fee estimate from the consultant.

1. The proposal submitted by the consultant shall include [~~either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and~~] a breakdown of the estimated fee for performing the work **and one (1) of** [~~including~~] the following:

a. A statement that the payment shall be based on the percentage of work completed; or

b. The proposed project milestones and corresponding maximum percentage payments.

2. The breakdown of the estimated fee shall include:

a. [~~1.~~] Direct salaries;

b. [~~2.~~] Overhead;

c. [~~3.~~] Other direct costs including cost of materials which are not included in the overhead,

d. [~~4.~~] Subconsultant costs;

e. [~~5.~~] Operating margin; and

f. [~~6.~~] Use of DBE firms.

(b) The Division of Program Performance [~~Professional Services~~] or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsultant to perform any part of the work, at the time of negotiations the consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for **engineering or engineering-**[~~professional engineering or~~]related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Program Performance, or designee [~~Professional Services~~].

(6)(a) The operating margin allowed **an engineering or engineering-**[~~a professional engineering or~~]related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. For a lump sum contract,[-] fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications up to and including $2,000,000 and ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, for the amount in excess of $2,000,000. The subconsultant's fee negotiated as part of the contract shall not be counted against the first $2,000,000; or[;]

2. For a unit price contract,[-] fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Program Performance [~~Professional Services~~] or other negotiation unit shall compare the consultant's proposed [~~established~~] fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Program Performance [~~Professional Services~~] or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work **if** [~~where~~] appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Program Performance [~~Professional Services~~] or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated person-hours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Program Performance [~~Professional Services~~] or other negotiation unit has negotiated a contract, the

head of the unit shall comply with the provisions of KRS 45A.825(10).

Section 4. Contract Preparation and Execution. (1) The Division of Program Performance [~~Professional Services~~] or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall [~~also~~] include by reference the General Provisions Attachment, [~~as revised May 2003~~] [~~July 1994~~] unless the project is for a consultant structure inspection.

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Maintenance [~~Operations~~], Consultant [~~Structure~~] Inspection Provisions [~~as revised in May 1993~~].

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Program Performance [~~Professional Services~~] or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) For each project that has received final approval for state or federal funding, the Division of Program Performance shall retain the following documents [~~If the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval~~]:

(a) A copy of the contract;

(b) The negotiated fee and person-hours;

(c) The consultant's fee and person-hour proposal;

(d) The cabinet's person-hour estimate;

(e) The minutes of the negotiation;

(f) The minutes of the predesign conference;

(g) A copy of the advertisement and announcement;

(h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the Professional Engineering **and Engineering-related** Services Selection Committee;

(k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering **and Engineering-related** Services Selection Committee; and

(l) The audit report of overhead and wage rates which was used to establish the fee.

(5) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a project by project basis.

(2) After the Division of Program Performance [~~Professional Services~~] or other negotiation unit receives notification indicating that the LRC Government Contract Review Committee has received the contract and project information for review, a notice to proceed shall be transmitted to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) If the LRC Government Contract Review Committee issues a notification of acceptance on a contract, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Government Contract Review Committee objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Government Contract Review Committee, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Government Contract Review Committee, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet. (1)(a) A project manager shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project manager.

(c) The project manager shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;

2. Reporting the status of these activities to the appropriate authority;

3. Periodically reviewing the work to determine if the work:

a. Is acceptable;

b. Is in accordance with the agreement for the particular project; and

c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and

4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section (9) of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent contract modifications, the consultant shall submit a request for a fee adjustment for the person-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed $25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than $25,000, the Director of the Division of Program Performance [~~Professional Services~~] or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) If it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

(a) Change in termini or section;

(b) Addition of major phases of work to the negotiated scope of work;

(c) Modification of previously approved work resulting from factors beyond the control of the consultant;

(d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a contract modification consideration are identified in the original contract;

(e) Delay by the cabinet as outlined in each contract;

(f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or

(g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by the Division of Professional Services, user division, highway district office or the consultant.

(3)(a) If the director or office head of the user division determines the change is appropnate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(b) If additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Program Performance [~~Professional Services~~] or other negotiation unit shall send the Contract Modification form TC 40-17 [~~or the Construction Consultant Change Order form, TC 63-53~~] to the consultant for its approval.

(6) After approval by the cabinet, the contract modification, LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Government Contract Review Committee.

(7) For projects requiring FHWA oversight, the approved contract modification shall be sent to the Federal Highway Administration for approval [~~in accordance with Section 4(4) of this administrative regulation~~].

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved contract modification.

(9) If a contract modification results in a fee negotiated for the contract modification in other than lump sum as a method of compensation, the consultant shall use an accounting system which segregates and accumulates allocable and allowable costs which are to be charged to the contract modification.

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project manager or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Program Performance [~~Professional Services~~] and in the consultant's experience record file.

(5)(a) If a consultant receives a below average rating, he may appeal, in writing, to the user division director within thirty (30) days of receiving the rating notification.

(b) The written notice of appeal shall specifically set forth the reasons why the consultant believes the below average rating is erroneous.

(c) The appeal shall be conducted in accordance with KRS Chapter 13B.

(d) At the conclusion of the appeal, if the performance evaluation is revised, the initial documentation of the below average rating shall be:

1. Removed from the file; and

2. Replaced with the revised performance documentation.

(6) The Director of the Division of Program Performance [~~Professional Services~~] or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropnate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 9. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) If the cabinet decides to cancel a professional services contract, the Division of Program Performance [~~Professional Services~~] or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall not be liable for payment of services past the effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed $25,000, **unless the contract is terminated due to criminal, fraudulent, or negligent behavior**.

Section 10. Payments to Consultants. Before payment of a partial or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 and a Consultant Monthly Report, **Exhibit 200-02** [~~TC 61-2~~] as an invoice to the chief district engineer or director of the user division or to their designees.

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) A final invoice and request for payment shall not be authorized until after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section 11. Incorporation [~~Material Incorporated~~] by Reference. (1) The following material is incorporated by reference:

(a) "Contract Modification", Form TC 40-17, September 1999 edition;

(b) [~~"Construction Consultant Change Order", Form TC 63-53, June 1992 edition;~~]

(~~c~~)] "Engineer's Pay Estimate", Form TC 61-408, October 2002 [~~August 1998~~] edition;

(c) [(~~d~~)] "Consultant Monthly Report", Exhibit 200-02, August 2005 [~~Form TC 61-2, March 1996~~] edition; [~~and~~]

(d) [(~~e~~)] "General Provisions Attachment (Exhibit 15-06 [~~15-07~~])", May 2003 [~~July 1994~~] edition; **and**

(e) Division of Maintenance Consultant Inspection Provisions, May 1993 edition.

(2) This material may be inspected, copied, or obtained, [~~All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied,~~] subject to applicable copyright law, at the Transportation Cabinet, Division of Program Performance [~~Professional Services~~], 200 Mero Street [~~6th Floor State Office Building, 501 High Street~~], Frankfort, Kentucky 40622.[~~:~~] [~~Its telephone number is (502) 564-4555. Its office hours are~~] 8 a.m. to 4.30 p.m. [~~eastern time on weekdays~~].

MARC D. WILLIAMS, P.E., Commissioner
BILL NIGHBERT, Secretary
APPROVED BY AGENCY: JULY 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p m.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Program Performance
(As Amended at ARRS, October 10, 2006)

600 KAR 6:080. Financial records and audits of firms.

RELATES TO: KRS 45A.800-45A.835, 23 C.F.R. 172, 26 C.F.R. 1.167, 48 C.F.R. 30, 31, Chapter 99, Subchapter B, 23 U.S.C. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related [related] services pursuant to KRS 45A.800 to 45A.835. The U.S. Department of Transportation requires all engineering or related projects which it funds to be subject to the cost principles or accounting standards established in 48 C.F.R. 30 and 31. This administrative regulation establishes the audit methodology to be used by a cabinet auditor for an engineering or engineering-related service agreement entered into by the cabinet pursuant to KRS 45A.800 to 45A.835; establishes the requirements for keeping financial records; and requires all firms contracting with or prequalified by the cabinet to comply with the federal regulations.

Section 1. Financial Records of Firms. (1) A firm which has requested prequalification, has been prequalified, is under contract, or has been selected to provide professional engineering or related services to the Transportation Cabinet[,] shall maintain and allow the cabinet access to:

(a) All financial or other information necessary to determine or verify the firm's direct wage rates, indirect cost rates, overhead, and direct project charges;

(b) All other information necessary to verify the firm's application for prequalification or renewal of prequalification; and

(c) Payroll.

(2)(a) A firm shall maintain all financial records including payroll time records for all employees, including the firm's principals, in accordance with 48 C.F.R. Part 31.

(b) The financial records of a firm shall be retained and made available to the Transportation Cabinet until after the next audit performed by the Transportation Cabinet or for five (5) years, whichever occurs first.

(3) If a firm is notified by the Transportation Cabinet of a pending audit, the auditor may request that some portions of the needed information be mailed to him or her in advance of the audit date. For the audit, the firm shall provide the following information to the auditor when he or she arrives:

(a) Chart of accounts;

(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;

(c) Income tax returns for the audit year;

(d) Statement of company policies to include personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, retirement plans, and other administrative policies;

(e) For the audit period, a breakdown of the total project fees from all contracts by indirect and direct cost, including a detailed listing of the direct costs;

(f) General ledger;

(g) Cash disbursements and accounts payable journals;

(h) All leases, including a lease on office space, buildings, machinery, copiers, equipment, and motor vehicles;

(i) Schedule of current personnel by classification;

(j) Most current payroll register;

(k) All federal, state, and local payroll tax forms;

(l) Billing statements;

(m) List of bonuses to individual employees and the date paid;

(n) The pension or retirement plan of the firm and the contributions made on behalf of each employee;

(o) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;

(p) All contracts which were active during the audit year; and

(q) Minutes from the directors or stockholders meetings.

(4)(a) Except for the items set forth in subsection (3)(c) and (q) of this section, the firm shall allow the auditor to make a copy of the items set forth in subsection (3) of this section.

(b) The auditor may review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm.

(5) A direct cost shall be determined by the provisions of 48 C.F.R. 31.202 and not by whether it is reimbursable.

Section 2. Limitations on Direct Costs. [and Indirect Costs. [(1)]] To compute the average hourly pay rate for a salaried job classification at a firm, the number of available annual working hours per year shall be 2080.

[(2) Indirect labor charges, including bonuses, temporary help, and other identifiable labor charges shall not exceed sixty-seven (67) percent of the direct labor base of the firm.]

Section 3. Approved Audits. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(2)(a) If the firm has an audit which covers the time period that the Transportation Cabinet's audit will cover and which was prepared by the Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency, the firm shall provide the audit report to the Transportation Cabinet prior to the scheduled audit.

(b) The Transportation Cabinet shall review an audit submitted pursuant to the provisions of paragraph (a) of this subsection. If necessary for an adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.

(c) The Transportation Cabinet shall approve the audit for use, disapprove the audit for use, or approve the audit for use based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.

(d) The negotiation unit shall use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee:

1. Subject to:

a. The review performed pursuant to paragraph (b) of this subsection; and

b. An adjustment made based on a limitation imposed by the cabinet pursuant to 600 KAR 6:070; and

2. With the understanding that a contract modification shall be processed if:

a. An audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses; and

b. An overhead submission packet is received in a timely manner to allow the cabinet sufficient time to perform or verify the overhead audit.

(3) Quarterly, the Transportation Cabinet shall select for audit a minimum of thirty (30) percent of the number of lump sum contracts that have been completed during the previous three (3) months.

Section 4. Audit Standards. (1) The following accounting and auditing standards shall be abided by in an audit conducted by the cabinet:

(a) "Government Auditing Standards" [, 2003] [1994] [Revision][*];

(b) "Codification of Statements on Auditing Standards (Includ-

ing Statements on Standards for Attestation Engagements)";

(c) "Onginal Pronouncements, Accounting Standards as of June 1, 2005 [1997], Volume I, [and] Volume II, and Volume III";

(d) 48 C.F.R. Part 31, Contract Cost Principles and Procedures;

(e) 48 C.F.R. Part 30, Cost Accounting Standards Administration, as it relates to 48 C.F.R. Part 31;

(f) 48 C.F.R. Chapter 99, Subchapter B, Procurement Practices and Cost Accounting Standards; and

(g) 26 C.F.R. Part 1.167, Depreciation, if a firm does not have an acceptable depreciation schedule in effect.

(2) The term "common control" or "related parties" as used in Number 57 of the "Original Pronouncements, Accounting Standards as of June 1, 2005 [1997], Volume I, [and] Volume II, and Volume III" shall be determined to exist if, in the relationship between a consultant firm and another company which is involved in real property renting, leasing arrangements, or joint ventures:

(a) A principal or person with management responsibilities or significant influence in the consultant firm:

1. Owns twenty (20) percent or more of the other company;

2. Is also a principal or person with management responsibilities or significant influence in the other company;

3. Has a family member whom he or she might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; or

4. Has a family member who might control or influence him or her because of the family relationship and who is a principal in or has management responsibilities or significant influence in the other company; or

(b) The interrelationship that exists between business entities makes it appear that the same persons control or have significant influence in those businesses.

Section 5. Audit Findings. (1)(a) Prior to the issuance of a final audit report, the auditor from the Transportation Cabinet shall present preliminary findings to the firm.

(b) If the auditor's preliminary findings include an adjustment to the overhead rate submitted by the firm, the auditor's work papers shall be included with the preliminary findings upon request by the firm.

(c) A comment from the firm shall be submitted in writing within fifteen (15) calendar days of the firm's receipt of the preliminary findings.

(d) The firm's comments shall be taken into consideration in the issuance of the final report.

(2)(a) A firm **shall have** [has] thirty (30) calendar days from the date the final report is received by the firm to request a review of the final report.

(b) The request for a review shall be in writing and clearly state all of the concerns with the final report and the reasons for the concern.

(c) If the concerns and the reasons for the concerns are not clearly stated, the request for review shall be returned.

(d)1. The firm may submit a supplement to the request for review.

2. The supplement shall be submitted in writing within the thirty (30) calendar days established in paragraph (a) of this subsection.

(3) The External Audit Review Committee shall evaluate the request for review and the final report.

(4) The External Audit Review Committee shall consist of the following:

(a) Executive Director of the Office of Budget and Fiscal Management [Commissioner of the Department of Fiscal Management], Chair;

(b) Deputy State Highway Engineer for Project Development; and

(c) Executive Director of the Office of Legal Services. [General Counsel and Legislative Affairs; and

(d) Executive Director of the Office of Policy Budget.]

(5) A committee member may appoint a proxy to serve on this committee.

(6) If desired, the External Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(7)(a) The firm **shall have** [has] thirty (30) calendar days from receipt by the firm of the committee's decision to appeal the decision to the Secretary of the Transportation Cabinet.

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 6. Governing Federal Regulations [Adoption Without Change]. [(1)] The following federal regulations shall govern the financial records and audits of firms [are adopted without change]:

(1) [(a)] 48 C.F.R. Part 31, "Contract Cost Principles and Procedures"[, as effective October 1, 1997];

(2) [(b)] 48 C.F.R. Part 30, "Cost Accounting Standards Administration"[, as effective October 1, 1997];

(3) [(c)] 48 C.F.R. Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards"[, as effective October 1, 1997]; and

(4) [(d)] 26 C.F.R. Part 1.167, "Depreciation"[, as effective July 18, 1995].

[(2) This material may be inspected, copied, or obtained at the Division of Audits, External Audit Branch, 200 Mero Street [3rd Floor State Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

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

(a) "Government Auditing Standards", 2003 [1994] Revision[,] by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)," copyright 2006 [1998] by the American Institute of Certified Public Accountants, Inc.; and

(c) "Original Pronouncements, Accounting Standards as of June 1, 2005 [1997], Volume I, [and] Volume II, and Volume III" published by the Financial Accounting Standards Board.

(2) This material may be:

(a) Inspected, copied, or obtained, subject to applicable copyright law, at the Division of Audits, External Audit Branch, 200 Mero Street [3rd Floor State Office Building, 501 High Street], Frankfort, Kentucky 40622, Monday through Fnday, 8 a.m. to 4:30 p.m.; or

(b) Obtained by contacting:

1. For a copy of "Government Auditing Standards", 2003 [1994] Revision[,], the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328;

2. For a copy of "Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements)", the American Institute of Certified Public Accountants, Inc., Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; or

3. For a copy of "Original Pronouncements, Accounting Standards as of June 1, 2005 [1998], Volume I, [and] Volume II, and Volume III", the Financial Accounting Standards Board, 401 Memtt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.

BILL NIGHBERT, Secretary
MARC D. WILLIAMS, P.E., Commissioner
APPROVED BY AGENCY: July 13, 2006
FILED WITH LRC: July 13, 2006 at 3 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, October 10, 2006)

702 KAR 5:010. Pupil transportation: technical assistance and monitoring.

RELATES TO: KRS 156.160, 157.370, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 and 189.540 require the Kentucky Board of Education to promulgate administrative regulations relating to the physical welfare and safety of public school children, the transportation of children to and from school, and the operation of school buses. [; and] KRS 157.370 **establishes** [references] the method of calculating transportation costs for the state public school funding program. This administrative regulation establishes guidelines and procedures whereby the Department of Education may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Department of Education may make safety inspections of school buses and special type vehicles either owned by the board or contracted to the board being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If **a** [any of these] school **bus** [buses] or special type **vehicle is** [vehicles are] found to be in an unsafe condition, the department **shall** [may] prohibit further use for the transportation of pupils until the conditions causing **it** [them] to be unsafe [shall] have been corrected.

Section 2. The Department of Education may make inspections of bus driver training records. If a school bus driver training record is found to be out of compliance, the department may decertify a driver whose training records are out of compliance until proper corrections are made.

Section 3. All vehicles used for the transportation of pupils shall meet the minimum safety standards for Kentucky school buses of the same model year except as provided in 702 KAR 5:060, Section 6(2), or [and] 702 KAR 5:130, Sections 1 and 2.

Section 4. The Department of Education may make a district pupil transportation system survey or audit in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 5. The Department of Education may require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Support Education Excellence in Kentucky Program.

Section 6. The Department of Education shall be responsible for the training and approval of state school bus inspectors **in accordance with the requirements established in 702 KAR 5:030.**

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair

APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 10, 2006 at 4 p.m.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, October 10, 2006

702 KAR 6:100. Appeal procedures for nutrition and health services [school and community nutrition] programs.

RELATES TO: KRS 156.070(5), 156.160(1)(f), 7 C.F.R. 210.18(q), 215.11, 220.13(f)(2), 225.13, 226 6(k), 42 U.S.C. 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), **7 C.F.R. 210.18(q), 225.13**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education **7 C.F.R. 210.18(q) and 225.13 require the board to establish an appeals procedure for the federal nutrition program**. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions that May be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:

(a) Denial of a new or renewing institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Notice of proposed termination of participation of an institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement [except for a late claim];

(h) Notice of proposed disqualification of a responsible principal or a responsible individual;

(i) Recovery of all or part of an advance in excess of the claim for the applicable period;

(j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(k) Demand for the remittance of an overpayment; or

(l) Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement[, except for a late claim under 7 C.F.R. 225.9(d)(5)];

(d) Refusal of a state agency to forward to FNS an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a payment;

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.

Section 2. Filing An Appeal. (1) A program sponsor, responsible principal, or responsible individual aggrieved by an adverse action of the Division of Nutrition and Health Services [School and Community Nutrition] (the "division") may appeal the action by filing a timely request for an appeal. The request shall be filed with the Director, Division of Nutrition and Health Services [School and Community Nutrition], Department of Education, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.

(2) The request shall be in writing and clearly state:
(a) The name and address of the program sponsor;
(b) The name and title of the person who signed the request;
(c) The adverse action being appealed, the basis of the appeal, and the relief or remedy sought;
(d) The date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication; and
(e) If a hearing before a hearing officer is desired, the desire for a hearing.
(3)(a) An appellant program sponsor may submit written information in support of its position when it files its appeal and request for a hearing. Except as provided in paragraph (b) of this subsection, it may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.
(b) If the appellant program sponsor is the Summer Food Service Program, it may submit additional written information in support of its position up to seven (7) calendar days after filing the appeal and request for a hearing.

Section 3. Appeal Timelines. (1) The request for appeal shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (or tenth working day if the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (or tenth working day if the Summer Food Service Program) falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.
(2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.
(3) Any information on which the division's action was based shall be available for inspection by the institution and the responsible principal and responsible individual from the date of receipt of the request for an appeal.

Section 4. Appeal Procedures. (1) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division [~~of School and Community Nutrition~~].
(2) During the appeal process, a program sponsor, responsible principal, responsible individual or food service management company shall:
(a) Self-represent;
(b) Be represented by legal counsel; or
(c) Be represented by another person.
(3) The administrative hearing procedures of KRS Chapter 13B shall apply.
(4) If a hearing is requested:
(a) Except as provided in subsection (7) of this section, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days advance notice of the time and place of the hearing;
(b) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at the scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing; and
(c) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.
(5) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, and the responsible principal and responsible individual and based on federal and state laws, administrative regulations, and policies and procedures governing the program.
(6) Except as provided in subsection (7) of this section, within sixty (60) days of the Department of Education's receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, and the responsible principal and responsible individual of the outcome of the appeal.
(7) If the appellant is the Summer Food Service Program:
(a) The notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested;
(b) The hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received;
(c) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record, and inform the appellant of the outcome of the appeal by certified mail, return receipt requested; and
(d) The Department of Education's action shall remain in effect during the appeal process except if it is an appeal of termination. If it is an appeal of termination:
1. Participating Summer Food Service Program sponsors and sites may continue to operate the program during the appeal, except as provided by subparagraph 3 of this paragraph;
2. Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the Department of Education's decision; and
3. Continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R. 210.18(q)(9), 220.13(f)(2), 225.13(b)(12) and 226.6(k)(5)(vii), the decision of the hearing officer shall be the final administrative determination.
(8) If an application to participate in the program was denied, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.
(9) If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.
(10) If an appellant's participation in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: August 10, 2006
FILED WITH LRC: August 10, 2006 at 4 p.m.
CONTACT: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Department for Libraries and Archives
Field Services Division
(As Amended at ARRS, October 10, 2006)

725 KAR 2:015. Public library facilities construction [~~Services and facilities for public libraries~~].

RELATES TO: KRS Chapter 13B, 171.027, 171.125, 173.040, 173.340, 173.480, 173.725, 198B.020, 198B.050, 227.300 [~~227.200-227.530~~], 322.010(3), 323.010(1), (2), 323.020, Chapters 341, 342, 344, 42 U.S.C. 12101
STATUTORY AUTHORITY: KRS 171.027
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.027 establishes The Public Library Facilities Construction Fund to as-

sist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects. KRS 171.027 requires the Department for Libraries and Archives to promulgate administrative regulations to **establish: (1)** [~~administer the fund, specifically: (1) the establishment of~~] the application process; (2) the criteria for project selection; (3) the minimum level of local participation required; and (4) the process to be followed in the construction of facilities. This administrative regulation: (1) defines terms; (2) states general requirements for eligibility; (3) establishes application procedures for the applicant and the department; (4) establishes the construction process; and (5) provides for the payment of funds.

Section 1. Definitions. (1) "Application packet" means the packet of materials KDLA sends to each applicant library, containing:

(a) A copy of the MOA currently being used;

(b) A copy of this administrative regulation;

(c) The criteria used to determine minimum matching requirements; and

(d) Other relevant material needed for completion of an application for assistance.

(2) "Architect" is defined **by** [at] KRS 323.010**(2)**[~~(1) and (2); licensing is required at KRS 323.020~~].

(3) "Available local revenue" means, as determined by the public library and approved by KDLA, the annual local funds available to **pay down** [~~retire~~] debt, not expected to decrease the level of normal and customary programs and services offered by the public library.

(4) "Award of assistance" means the annual grant payment awarded, for a period of not more than twenty (20) years, to a local public library to **pay down** [~~retire~~] debt incurred **to construct or renovate** [~~for the purpose of constructing or renovating~~] a local public library facility.

(5) "Construction coordinator" means a specialized consultant employed by KDLA for the purpose of coordinating and consulting with Kentucky public libraries on construction issues.

(6) "Engineer" **means "professional engineer" as** [~~is~~] defined **by** [~~at~~] KRS 322.010(3).

(7) "KDLA" means the Kentucky Department for Libraries and Archives.

(8) "Local board" means:

(a) The local public library board of trustees established under KRS 173.040, 173.340, 173.480, or 173.725; or

(b) The official local governing body responsible for the operations of a local public library.

(9) "MOA" or "memorandum of agreement" means the written, long-term agreement between KDLA and a library [~~for~~] awarding a PLFC Fund Grant to **pay down** [~~retire~~] debt incurred to finance a library facilities construction or renovation project, including each term and condition agreed to and stipulated by each party **on the Memorandum of Agreement**[~~, on a form developed by KDLA~~].

(10) "PLFC fund grant" means the annual grant awarded by KDLA, over a period of not more than twenty (20) years, to a local public library or governing body **to assist** [~~for the purpose of assisting~~] in the **payment** [~~retirement~~] of debt incurred **construct or renovate** [~~for the purpose of constructing or renovating~~] local public library facilities.

(11) "Public library" is defined **by** [~~at~~] KRS 171.125(2).

(12) "Punch list" means an inventory of work that remains to be completed and signed by the owner, the architect, and the contractor, to show that they agree the items on the list represent the work that remains to be done.

(13) **"Responsible bidder" means a person, business, or organization that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.**

(14) "State libranan" means the official described at KRS 171.130.

Section 2. Stipulations and Conditions. **(1)** A public library building shall be **constructed in compliance with** [~~bound by~~] the following:

[~~(1) General stipulations governing a public service or public building construction, including:~~]

(a) Uniform State Building Code, KRS 198B.050, as administered by the Kentucky Department for Housing, Buildings and Construction, KRS 198B.020;

(b) **Standards of Safety related to fire prevention and protection, KRS 227.300;** [~~Fire Prevention and Protection Code, KRS 227.200 to 227.530~~];

(c) The Americans With Disabilities Act of 1990, 42 U.S.C. 12101;

(d) Workers' Compensation and Unemployment Insurance, KRS Chapters 341 and 342;

(e) State Prevailing Wage Law, KRS 337.505 through 337.550, and

(f) The Civil Rights Act, KRS Chapter 344.

(2) **The local board of a public** [~~For a~~] library applying for assistance from the PLFC fund **shall comply with** [~~:~~] the following KDLA requirements:

(a) A building or renovation shall be planned, and construction shall be supervised by an architect or engineer **whose credentials have been confirmed** [~~approved~~] by KDLA.

(b) A contract for an architectural or construction service shall be in **a** [~~the~~] standard form used by the American Institute of Architects, [~~as amended by KDLA~~]. **Information about American Institute of Architects forms and where they may be obtained is available on the Institute's Web site, www.aia.org, and on the Web site of the Kentucky Society of the American Institute of Architects, www.aiaky.org.** An architect shall maintain professional liability insurance, including errors and omission insurance, in accordance with the limits set forth in the construction grant contract.

(c) Each plan **and** [~~or~~] site selected for construction shall be approved by KDLA.

(d) The site and facility shall be owned by the local board. KDLA shall approve an alternative facility ownership or use arrangement if it is determined by KDLA to be in the best interest of the state, the local board, and the population served by that library. An applicant shall request KDLA approval for a proposed site prior to purchasing the site. A letter indicating approval or disapproval shall be sent to the local board by KDLA. Property not approved shall be ineligible for construction funds. A building owned by a local county or city government shall be approved if an authoritative letter is obtained establishing the local board's right of possession and use of the building for at least twenty (20) years.

(e) Purchase of an existing building for conversion to library use shall qualify for **a PLFC fund grant** [~~and~~] if:

1. A structural engineer or **architect** [~~other competent authority~~] certifies that the building is structurally sound and suitable for conversion;

2. The existing building is of open construction, supportive of a functionally flexible library; and

3. The service and economic considerations for conversion outweigh the service and economic considerations for construction of a new building.

(f) A library building constructed using KDLA funds shall:

1. Remain open to the public; and

2. Maintain appropriately-qualified library personnel.

(g) An application shall include:

1. A written building program; and

2. A current long-range plan.

(h) A project shall:

1. Demonstrate a plan for future growth; and

2.a. Meet KDLA minimum standards for a public library facility; or

b. Be included in a countywide master facility plan designed to meet KDLA minimum standards within a reasonable time, with reference to the Kentucky State Data Center's ten (10) year median population projection.

(i) A local board shall provide free countywide library services, without discrimination, to the citizens of the county in which the public library facility is located.

[~~(j) A library receiving an award of assistance shall not reapply until the current construction project is complete and officially closed out by KDLA.~~]

Section 3. Application for Assistance. (1) Each fall preceding a fiscal year that funding is available through the PLFC fund, KDLA shall distribute an "Intent to Apply" notice to every public library in the Commonwealth. A library intending to apply for assistance for [beginning in] the following fiscal year shall submit to KDLA a Notification of Intent to Apply [notify KDLA on forms developed by the department].

(2) KDLA shall send the following to each public library requesting fund assistance:

(a) Notification of the amount of funds available for PLFC grants; and

(b) An application packet.

(3) An incomplete or late application shall not be considered unless the delay will not interfere with the awarding of the PLFC grants and there is a[. The state librarian may allow reconsideration on the basis of] documented, unusual circumstance.

(4) An unusual circumstance shall include a delay by a third party in certifying that the proposed site is not located on a historic site, or in a flood plain, or other documented circumstance beyond the control of the local board.

Section 4. Review of Applications for Assistance From [Under] the PLFC Fund. (1) KDLA shall establish a construction review committee to:

(a) Review applications; and

(b) Recommend to the state librarian the applicants considered eligible for a PLFC fund award.

(2) The committee shall be composed of five (5) members, as follows:

(a) The state librarian shall appoint two (2) Field Services Division consultants, to serve a term of one (1) year; [two (2) years, except:

1. One (1) member shall serve an initial term of one (1) year; and

2. One (1) member shall serve an initial term of two (2) years][.]

(b) The Director of Field Services shall appoint two (2) members each of whom has been involved, within the previous eight (8) years, in the completion of a building project valued at a minimum of $500,000. Each member shall be a:

1. Library director;

2. Trustee; or

3. Staff member; [.]

(c) The construction coordinator shall serve:

1. For the duration of his or her position; and

2. As nonvoting chair of the committee; and [.]

(d) The Director of Field Services shall appoint a replacement for a member unable to complete his or her term.

(3) KDLA shall establish:

(a) Procedures for the construction review committee; and

(b) A ranking system for the PLFC fund award.

(4) The criteria for award shall be:

(a) Need:

1. Assessment of existing facilities and service;

2. Analysis of population data;

3. Minimum square footage;

4. Available local revenue;

5. General policies established for state assistance under the Public Library Services Improvement and Equalization Fund; and

6. State library and library association [Other relevant] standards.

(b) Planning: the extent to which the proposed facility addresses the applicant library's long-range plan for services.

(c) Partnerships: the extent to which the project strengthens the applicant library's relationship with other organizations in the service area.

(d) Project budget: The extent to which the applicant library's project budget addresses anticipated expenditures, including at least five (5) percent for contingency.

(e) Local match, if required: the extent to which the local board of a county with adequate income to qualify for matching assistance under the PLFC fund shows funds available to match the state award and to complete the project.

(f) Sustainability: the extent to which the local board can realistically afford to operate the proposed project.

(g) [(g) Previous assistance: priority shall be given to a library that:

1. Has facilities that do not meet minimum standards, and

2. Has not received:

a. A major construction grant; or

b. A PLFC fund award.]

[1. (h)] Completeness of application: the extent to which the applicant library has fairly and accurately provided required information on the application form.

(5) The state librarian shall take one (1) of the following actions, based on the recommendation of the construction review committee:

(a) Approve the application and offer an award of assistance;

(b) Approve the application at a reduced level or based upon funds availability;

(c) Approve the application with restrictive conditions; or

(d) Reject the application.

(6) KDLA shall notify each applicant, in writing, of the result of the state librarian's action approving or rejecting the application.

Section 5. Informal Appeals. (1) An applicant aggrieved by a decision of the state librarian may file an informal appeal with KDLA.

(2) Procedures.

(a) The local board shall notify KDLA of its [the] intent to appeal:

1. Within twenty-one (21) days of the date of the letter of notification;

2. In writing;

3. Stating the basis for appeal; and

4. By registered mail [Mailed] to the state librarian, [by registered mail,] return receipt requested.

(b) Upon receipt of a notice of intent to appeal, the state librarian shall:

1. Convene a board of appeals composed of three (3) members, one (1) [of] each having been nominated by:

a. The State Advisory Council on Libraries;

b. The Kentucky Library Association; and

c. The Kentucky Library Trustees Association; and

2. Designate one (1) of the appointees to serve as chair.

(c) The board of appeals [board] shall notify the appellant and the state librarian, in writing, of the date and place of the hearing. Within twenty-one (21) calendar days after the hearing the appeals board shall notify the state librarian and the local board of its recommendation.

(d) The state librarian shall consider the recommendation of the appeals board and shall, within fourteen (14) calendar days of receipt, render a final decision.

(3) A party aggrieved by a final decision of the state librarian may file a formal appeal in accordance with KRS Chapter 13B.

Section 6. Award of Assistance. (1) The state librarian shall notify each eligible library of:

(a) The amount of assistance it will receive; and

(b) The requirements to be met in order to accept the award.

(2) [A public library shall not receive more than twenty (20) percent of the total PLFC funding available during that biennium]. KDLA may make an award to a public library as long as the total of all awards of assistance do not exceed the amount of PLFC funding that is available. An award of assistance shall be [is] subject to availability of funds appropriated for this purpose in each biennium.

(3) Within thirty (30) days of receipt of notice of the award, the public library board shall notify KDLA of acceptance or rejection of the award of assistance. A public library not responding within thirty (30) days shall be declared ineligible and the award of assistance withdrawn and redistributed to the eligible recipients. [In extenuating circumstances and] Upon written request within the original thirty (30) day period, the state librarian may grant a single thirty (30) day extension If extenuating circumstances exist. Extenuating circumstances include problems with:

(a) Finalizing the terms of financing;

(b) Obtaining title to the property;

(c) Obtaining surveys of the property; and

(d) Similar circumstances beyond the control of the local board.

Section 7. Procedures After Acceptance [Approval]. (1) After a local board decides to accept an award of assistance [has received a letter of approval], the local board shall:

(a) Establish a building committee, the meetings of which shall be attended by the regional librarian and the construction coordinator, if [when] possible, and

(b) Complete the following:

1. An agreed-upon MOA between KDLA and the local board, signed by both;

2. The building committee membership list and schedule of meeting dates;

3. Holding company contract, if needed;

4. Construction plans approved by KDLA; and

5. Other documentation as specified by KDLA such as financial documents and engineering reports necessary to ensure compliance with this administrative regulation

(2) Files for the project shall be kept at KDLA as directed in the appropriate public record retention schedule.

(3) Funds for projects receiving assistance shall be distributed according to a payment and reporting schedule contained in the MOA between KDLA and the local board.

Section 8. Construction Procedures. (1) The local board shall retain an attorney to act as advisor on contracts and other legal matters during the term of the construction project.

(2) The project architect shall submit, to the U.S. Department of Labor, a list of construction trades that may be involved in order to establish the wage rate which the contractor shall be required to pay.

(3) The architect shall proceed with the working drawings and specifications for submission to KDLA for final approval by KDLA before the project is advertised for bids

(4) After [When] KDLA has approved the working drawings, the plans shall be completed and advertised publicly for construction bids. The advertisement shall include notice that a builder's risk policy shall be required as part of the construction contract.

(5) The bid opening date shall be coordinated with KDLA and the local library.

(6) The contract shall be awarded to the "lowest and best" responsible bidder, as mutually determined by the local board, the architect, and KDLA.

(7) The architect shall notify the construction coordinator at least one (1) week before the building is ready for inspection and punch list. The completed building shall be inspected by KDLA's designated official. A KDLA representative may make site visits during the project term.

(8) A copy of each change order, invoice, and documentation of payment made[,] shall be kept by the library in accordance with the Local Government General Records Retention Schedule established by KDLA [applicable records schedules] and submitted to KDLA if [the department when] requested [filed with KDLA at the time of report submission].

(9) KDLA may, upon request of the local board, assist in selecting and ordering the furniture and equipment for the project in accordance with state law governing state agency advertisement, bidding, and purchase from a state price contract. A prospective vendor shall furnish a bid and performance bond for each purchase over $50,000.

(10) Each payment to a contractor or supplier shall be made promptly, upon approval by the architect. Before substantial completion of the project [Until the construction contract is substantially performed], the board shall withhold ten (10) percent as retainage. After [Upon] substantial completion of the project [work], the retainage may be reduced to five (5) percent if certified by the architect and approved by the board. If, after receipt of the punchlist, a reason for reduction of the retainage is certified, in writing, by the architect and approved by the board, the retainage may be reduced below five (5) percent. The minimum lump sum amount retained shall be twice the estimated cost to correct the punch list items.

Section 9. Expenditure of Funds. (1) Funds from a PLFC grant shall be used only to pay a cost directly related to the construction or renovation of a local public library facility.

(2) A cost may include:

(a) Site acquisition;

(b) Architectural and engineering services;

(c) Financial and legal services, and

(d) Equipment.

(3) Site acquisition cost shall be limited to the lesser of:

(a) The actual cost of acquiring a site; or

(b) The fair market value of the site as determined by a qualified appraiser [qualified appraisal] approved by KDLA.

(4) Construction cost shall:

(a) Include fixed or movable equipment; and

(b) Not include consumable supplies.

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

(a) "Memorandum of Agreement", 10/06 [Application for State Public Library Facilities Construction Funds", 3/01]; [and]

(b) "Notification of Intent to Apply for State Fiscal Year Public Library Facility Construction Funds", 6/06;

(c) "Public Library Facility Construction Fund Application for Fiscal Year Construction Grants", 8/06; and

(d) "Local Government General Records Retention Schedule", 9/99 ["Notification of Intent to Apply for Public Library Facilities Construction Funds", 12/00].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Libraries and Archives, 300 Coffee Tree Road, Box 537, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES A. NELSON, State Librarian and Commissioner
JUDITH GIBBONS, Director, Field Services Division
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 at noon
CONTACT PERSON: Chris Bischoff, Construction Coordinator, 300 Coffee Tree Rd., Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 213, fax (502) 564-5773.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, October 10, 2006)

806 KAR 17:180. Standard health benefit plan.

RELATES TO: KRS 304.17A-080, [304.17A-200] 304.17A-250[, 304.17A-430]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-731, signed July 9, 2004, created the Office of Insurance.] KRS 304.2-110(1) authorizes the Executive Director of Insurance [commissioner]to 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 304.17A-250(1) requires the Executive Director of Insurance [commissioner] to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets. This administrative regulation establishes one (1) standard health benefit plan that may provide health insurance coverage in the individual and small group markets and establishes procedures for modifications to the standard health benefit plan.

Section 1. Definitions. (1) "Health Insurance Advisory Council" means the [a] body established in accordance with KRS 304.17A-080.

(2) "Office" is defined in KRS 304.1-050(2)

(3) "Standard health benefit plan" means the format, cost-

sharing levels, definitions, benefits, exclusions, and supplemental benefit riders;

(a) Established by the Office [Department] of Insurance and the Health Insurance Advisory Council in accordance with KRS 304.17A-250 and any other health insurance benefit mandated by the General Assembly; and

(b) Included in the Kentucky Standard Health Benefit Plan, HIPMC-SP1.

Section 2. Modification Process. (1) The standard health benefit plan shall remain in effect until the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan may be modified each year and each modification shall apply to each policy or certificate issued or renewed on or after July 15 [of each year]

(3) A [Any interested] person wishing to make a recommendation for modification of the standard health benefit plan shall:

(a) Submit the [their] recommendation, in writing, to the Kentucky Office of Insurance, Division of Health Insurance Policy and Managed Care, by May 1 of the year preceding the year in which each modification is recommended for implementation;

(b) Explain the need for each recommended modification; and

(c) Provide a statement regarding the cost effect of each recommended modification

(4) Prior to July 1 [Within a reasonable time after May 1] of each year:

(a) The office [department] shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-080(3);

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the office [department] pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the office [department] shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a standard health benefit plan shall:

(a) Implement each modification to the standard health benefit plan prescribed by the office [department]; and

(b) Amend each policy form and rate filing to include every modification to the standard health benefit plan.

Section 3. Incorporation by Reference. (1) "The Kentucky Standard Health Benefit Plan, HIPMC-SP1", (07/06) [(07/04)"] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [department's Internet] Web site at http://doi ppr.ky gov/kentucky/.

R. GLENN JENNINGS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 5, 2006
FILED WITH LRC: July 12, 2006 at 11 a.m.
CONTACT PERSON: Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Disability Services
(As Amended at ARRS, October 10, 2006)

907 KAR 1:170. Reimbursement for home and community based waiver services.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

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, is required 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 home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20 066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

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

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205 8451; and

(b) Meets the criteria for HCB waiver services as established in 907 KAR 1:160.

(8) "Home and community based waiver" or "HCB waiver" means home and community based waiver services.

(9) "Level I" means a reimbursement rate of up to thirty (30) dollars and eighty (80) cents [twenty-eight (28) dollars] paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as HCB waiver.

(10) "Level II" means a reimbursement rate of up to thirty-seven (37) dollars and forty (40) cents [thirty-four (34) dollars] paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as HCB waiver, if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

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

(12) "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475.101.

Section 2. Payment Amounts for HCB Waiver Covered Services Prior to July 1, 2001. (1) An HCB waiver provider providing services to an HCB recipient shall comply with the provisions established in 907 KAR 1:031 and 907 KAR 1:160.

(2) An HCB waiver provider shall be reimbursed in accordance with the reimbursement methodology established in 907 KAR 1:031 for the following HCB waiver services:

(a) Assessment;

(b) Reassessment;

(c) Case management;
(d) Homemaker; or
(e) Personal care.

(3) For a rate determined in accordance with the reimbursement methodology established in 907 KAR 1:031, the department shall apply a fixed upper limit which shall apply regardless of the length of time a provider has participated in the Medicaid Program.

(4) The fixed upper limit for an HCB waiver service shall be set:

(a) Using each HCB waiver provider's average unit cost per service which shall be:

1. Grouped by service; and
2. Arrayed from lowest to highest;

(b) Using the median per unit cost for each service array based on the median number of Medicaid units; and

(c) At 130 percent of the median cost per unit.

(5) The department shall:

(a) Use an HCB waiver provider's most recent cost report data available as of May 31 to determine the provider's rate for the next state fiscal year, which begins July 1;

(b) Update upper limits each July 1; and

(c) Except as provided in subsection (3) of this section, not apply upper limits until a provider has participated in the program for two (2) full agency fiscal years.

(6) If a provider fails to submit a cost report to the department before May 31, that provider's rates for HCB waiver services shall remain the same as those of the previous fiscal year, until receipt of an acceptable cost report.

(7) Payment for a covered respite service shall:

(a) Be limited to $2,000 per six (6) month period within a calendar year beginning January 1 through June 30 and July 1 through December 31;

(b) Not exceed $4,000 per calendar year for a period beginning January 1 through December 31;

(c) Be subject to a year-end cost settlement by the department:

1. To actual cost up to $4,000; or
2. To charges, if lower; and

(d) Be made upon receipt of a claim to the department by an HCB waiver provider pursuant to 907 KAR 1:673.

(8) Payment for a minor home adaptation to an HCB recipient's home shall:

(a) Be made on the basis of actual billed charges;

(b) Be for the actual cost of the minor home adaptation, including actual overhead cost which shall not exceed twenty (20) percent of actual cost;

(c) Not exceed a maximum of $500 per calendar year per HCB recipient beginning January 1; and

(d) Be subject to a year-end cost settlement by the department:

1. To actual cost up to $500; or
2. To charges, if lower.

(9) An attendant care service shall:

(a) Be reimbursed on a fee for service basis at the lower of reasonable cost or charge not to exceed the Medicaid upper limit of eleven (11) dollars and fifty (50) cents per unit of service;

(b) Be reported as nonreimbursable cost in an HCB waiver provider's cost report; and

(c) Not be subject to year-end cost settlement.

(10) Attendant care shall be limited to forty-five (45) hours per week and travel time for an attendant shall not be included in a unit of service.

Section 3. Audits of HCB Waiver Providers. HCB waiver cost reports shall be audited:

(1) As deemed necessary by the department; and

(2) To ensure that final payment to a provider is made in accordance with 907 KAR 1:031.

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement shall:

(a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to ten (10) units per week [~~beginning May 19, 2003,~~] at each HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or thirty (30) dollars and eighty (80) cents [~~twenty-eight (28) dollars~~] per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or thirty-seven dollars and forty (40) cents [~~thirty-four (34) dollars~~] per unit of service.

(4) The department shall not reimburse an ADHC center for more than two (2) basic units of service per day per HCB recipient.

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient;

(b) Be a minimum of:

1. Three (3) hours per day for one (1) unit; or
2. Two (2) hours for one (1) unit if the HCB recipient has occupied the ADHC center for two (2) hours prior to leaving the center due to a documented illness or emergency;

(c) Be a minimum of six (6) hours for two (2) units; and

(d) Not exceed two (2) units per day.

(6) An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB waiver;
2. Private pay; or
3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation.

(7) If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(8) To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (6)(a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established in Section 5(2) of this administrative regulation.

(9) To qualify for reimbursement as an ancillary therapy, a service shall be:

(a) Medically necessary;
(b) Ordered by a physician; and
(c) Limited to:

1. Physical therapy provided by a physical therapist as defined in 907 KAR 1:160, Section 1(18);
2. Occupational therapy provided by an occupational therapist as defined in 907 KAR 1:160, Section 1(17); or
3. Speech therapy provided by a speech pathologist as defined in 907 KAR 1:160, Section 1(23).

(10) Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(11) A respite service shall:

(a) Be provided on site in an ADHC center; and

(b) Be provided pursuant to 907 KAR 1:160.

(12) One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(13) The length of time an HCB recipient receives a respite service shall be documented.

(14) A covered respite service shall be reimbursed as established in Section 7 [8] of this administrative regulation.

Section 5. Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that Is [~~shall be~~] attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;
2. Epilepsy;
3. Autism; or
4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:
   a. Communication;
   b. Self-care;
   c. Home-living;
   d. Social skills;
   e Community use;
   f. Self direction;
   g Health and safety;
   h. Functional academics;
   i. Leisure; or
   ]. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
2. A limitation that may not be attributable to only a physical or sensory impairment or mental illness.

Section 6. The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

(a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;
2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and
3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate; and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1.671, Sections 8 and 9.

Section 7. [~~Payment Rate for State Fiscal Year (SFY 2002). Effective July 1, 2001 the payment rate that was in effect on June 30, 2001 for a home and community based waiver service shall remain in effect until June 30, 2002.~~

~~Section 8.~~] Fixed Upper Payment Rate Limits. (1) Except as provided in Section 4 of this administrative regulation, [~~effective July 1, 2002~~] the payment rate for a home and community based waiver service provided in accordance with 907 KAR 1:160 shall be the lessor of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	$75 00	Entire assessment process
Reassessment	$75.00	Entire reassessment process
Case Management	$15 00	15 minutes
Homemaking	$13.00	30 minutes
Personal Care	$15 00	30 minutes
Attendant Care	$11.50	1 hour (not to exceed 45 hours per week)
Respite	$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)	1 hour
Minor Home Adaptation	$500 per calendar year	

(2) The services listed in subsection (1) of this section shall not be subject to cost settlement by the department.

(3) A [~~For HCB recipients eligible for homemaking service prior to May 19, 2003, homemaking service shall not be limited until July 1, 2003, when homemaking service shall be limited to no more than four (4) units per week per HCB recipient. For HCB recipients eligible for homemaking service on or after May 19, 2003,~~] homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 8. [~~9.~~] Appeal Rights. An HCB waiver provider may appeal department decisions as to the application of this [~~the~~] administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. [~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", May 1991 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", October 1999 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. THOMAS BADGETT, MD, Ph.D., Acting Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 29, 2006
FILED WITH LRC: June 30, 2006 at 1 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 Long-Term Care and Community Alternatives
(As Amended at ARRS, October 10, 2006)

907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520, 42 C.F.R. 438.75, 438 150 -

438.158, 42 U.S.C. 1395l-3 and 1396r [1819, 1919 of the Social Security Act]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396r[, 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 [empowers] 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 requirements for [sets forth] the nurse aide training and competency evaluation program [requirements] and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Competency examination [evaluation program]" means a written or oral examination that is:

(a) Described by 42 C.F.R. 483.154; and

(b) Used as a standard for determining satisfactory completion of a nurse aide training and competency evaluation program [the competency evaluation program required by 42 U.S.C. 1396r for nurse aides employed by Medicaid participating nursing facilities prior to October 1, 1989, when the program is approved by the state in which the nursing facility is located].

(3) "Department" means the Department for Medicaid Services or its designee [and its designated agents and representatives].

(4) "Licensed health professional" means a:

(a) Physician;

(b) Physician assistant;

(c) Nurse practitioner;

(d) Physical, speech, or occupational therapist;

(e) Registered nurse;

(f) Licensed practical nurse;

(g) Registered dietician; or

(h) Licensed or certified social worker.

(5) "Nurse aide" means an individual who has successfully completed the nurse aide training and competency evaluation program and may include[, including] a nursing student, medication aide, or [and] a person employed through a nursing pool[,] who provides nursing or nursing-related services to a resident in a nursing facility, excluding:

(a) An individual who is a licensed health professional;

(b) A volunteer who provides the nursing or nursing-related services without monetary compensation; or [and]

(c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.

(6) "Nurse aide training and competency evaluation program [programs (NATCEP)]" means a competency evaluation program that meets the requirements of 42 C.F.R. 483.152 [the program of nurse aide training and competency evaluation for nurse aides].

(7) ["State-approved program" means the nurse aide training and competency evaluation program requirements established by the "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program".

(8)] "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

Section 2. General Requirements. **(1) A nursing facility shall not use an individual working in the facility as a nurse aide for more than four (4) months, on a full-time basis, unless the individual:**

(a) Is competent to provide nursing and nursing-related services; and

(b)1. Has satisfactorily completed a nurse aide training and competency evaluation program; or

2. Has been deemed or determined competent in accordance with 42 C.F.R. 483.150(a) and (b).

(2) If an employee is used on a temporary, per diem, leased, or other nonpermanent basis, a nursing facility shall not use the employee as a nursing aide unless the employee meets the requirements of subsection (1) of this section.

(3) A nursing facility shall not use an individual who has worked less than four (4) months as a nurse aide in that facility unless the individual:

(a) Is a full-time employee participating in a department-approved nurse aide training and competency evaluation program;

(b) Has demonstrated competence through satisfactory participation in a department-approved nurse aide training and competency evaluation program; or

(c) Has been deemed or determined competent in accordance with 42 C.F.R. 483.150(a) and (b) [If an individual has not satisfactorily completed the nurse aide training and competency evaluation program, a nursing facility that is enrolled in the Medicaid Program pursuant to 907 KAR 1:672 shall not use the individual as a nurse aide on a:

(1) Permanent basis for more than four (4) months; or

(2) Temporary, per diem, leased, or any other basis that is not permanent].

Section 3. Course Requirements for the Nurse Aide Training and Competency Evaluation Programs and Instructor Qualifications. In accordance with 42 C.F.R. 483.152 and the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, a nurse aide training and competency evaluation program shall:

(1) Consist of a minimum of seventy-five (75) clock hours of nurse aide instructional training;

(2) Include at least sixteen (16) hours of supervised practical training; and

(3) Require that the program's instructor:

(a) Demonstrate completion of a course in teaching adults or have experience teaching adults; and

(b) Be a registered nurse who possesses a minimum of two (2) years of nursing experience, at least one (1) year of which shall be in the provision of long-term care [facility] services; or

(c) Be a licensed practical nurse who:

1. Has at least one (1) year of experience; and

2. Provides instruction as a supplement to the registered nurse instructor.

Section 4. Regular In-service Education and Ongoing Staff Development. A nursing facility shall provide and document that at least twelve (12) hours of ongoing staff development training is given annually to each nurse aide who:

(1) Is employed by the facility; and

(2) Has satisfactorily completed the nurse aide training and competency evaluation program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. (1) The following may request approval from the department to provide a nurse aide training and competency evaluation program:

(a) The Kentucky Community and Technical College System (KCTCS);

(b) The Office of Career and Technical Education, Department for Workforce Investment, Education Cabinet;

(c) A nursing facility;

(d) A community college;

(e) A university program;

(f) A licensed proprietary education program;

(g) A health care facility that is licensed in accordance with KRS 216B.015(12) and offers a nurse aide training and competency evaluation program to its own employees; or

(h) A nonprofit, church-related or tax-supported program that is not identified in paragraphs (a) through (g) of this subsection.

(2) In order to provide a nurse aide [aid] training and competency evaluation program, an entity identified in subsection (1) of this section shall be approved by the department in accordance

with Section XI of the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(3) In accordance with 42 C.F.R. 483.151(c), the department shall, within ninety (90) days of receipt of a request for approval or receipt of additional information:

(a) Advise a requesting entity if its nurse aide training and competency evaluation program has been approved or denied; or

(b) Request additional information from the requesting entity.

(4) The department shall conduct an on-site review of each nurse aide [aid] training and competence evaluation program that is approved:

(a) Within one (1) year of initial approval; and

(b) Annually thereafter.

Section 6. Withdrawal of Approval. (1) The department shall withdraw approval of a nurse aide training and competency evaluation program, if the entity providing the program does not:

(a) Meet the minimum requirements of 42 C.F.R. 483.152 or 483.154;

(b) Permit an unannounced visit by the department; or

(c) Submit an acceptable plan of correction if requested by the department upon completion of an on-site review.

(2) The department shall not approve a nurse aide training and competency evaluation program offered by, or in a nursing facility that, within the previous two (2) years.:

(a) Operated under a waiver in accordance with section 1819(b)(4)(C)(ii)(II) of the Social Security Act, 42 U.S.C. 1395i-3(b)(4)(C)(ii)(II), by which the facility was not required to engage the services of a registered professional nurse for more than forty (40) hours per week;

(b) Operated under a waiver in accordance with section 1919(b)(4)(C)(ii) of the Social Security Act, 42 U.S.C. 1396r(b)(4)(C)(ii), that was granted on the basis of a demonstration by the facility of its inability to provide nursing care for more than forty-eight (48) hours per week;

(c) Has been subject to an extended, or partial extended, survey conducted by the cabinet under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Social Security Act, 42 U.S.C. 1395i-3(g)(2)(B)(II) or 1396r(g)(2)(B)(ii);

(d) Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or 1919(h)(2)(A)(ii) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(ii) or 1396r(g)(2)(A)(II), of no less than $5,000; or

(e) Has been subject to one (1) of the following actions:

1. Denial of payment in accordance with section 1819(h)(2)(B)(i) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(I), for individuals entitled to benefits under Title XIII of the Act, 42 U.S.C. 1395 to 1395hhh;

2. Appointment of temporary management to oversee operation of the facility in accordance with section 1819(h)(2)(B)(iii) or 1919(h)(2)(A)(iii) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(III) or 1396r(h)(2)(A)(iii);

3. Termination of the facility's participation:

a. In accordance with section 1819(h)(4) of the Social Security Act, 42 U.S.C. 1395i-3(h)(4); or

b. In the Medicaid Program in accordance with section 1919(h)(1)(B)(i) of the Social Security Act, 42 U.S.C. 1396r(h)(1)(B)(I);

4. Denial of payment under Medicaid's Title XIX State plan in accordance with section 1919(h)(1)(B)(i) of the Social Security Act, 42 U.S.C. 1396r(h)(1)(B)(I), for any individual admitted to the nursing facility after notice of the denial has been made to the public and the facility; or

5. Closure of the facility or transfer of residents to other facilities in accordance with section 1919(h)(2)(A)(iv) of the Social Security Act, 42 U.S.C. 1396r(h)(2)(A)(iv).

(3) If the department withdraws approval of a nurse aide training and competency evaluation program, the department shall, in accordance with 42 C.F.R. 483.151(e)(4):

(a) Notify the nurse aide training and competency evaluation program in writing;

(b) Indicate the reason for withdrawal of approval; and

(c) Allow each student who has started a nurse aide training and competency evaluation program for which approval has been withdrawn to complete the course.

(4) In accordance with section 1919(f)(2)(C) of the Social Security Act, 42 U.S.C. 1396r(f)(2)(C) the department may allow a nurse aide training and competency evaluation program to be provided in, but not by, a nursing facility that meets one (1) of the conditions of subsection (2) of this section if the department:

(a) Determines that there is not another training and competency evaluation program offered within a reasonable distance of the facility;

(b) Assures, through an effort to oversee operation of the facility, that an adequate environment exists for operating the training and competency evaluation program in the facility; and

(c) Provides notice to the cabinet's long-term care ombudsman of the determination required [described] by paragraph (a) of this subsection and assurance required [described] by paragraph (b) of this subsection.

Section 7. Competency Examination and Competency Evaluation. (1) KCTCS or another department-approved entity that is not a nursing facility shall administer and evaluate the final examination, including the skills demonstration portion of the nurse aide training and competency evaluation. [Except for a nursing facility, an entity identified in Section 5(1) of this administrative regulation shall administer and allow an individual to choose between a final written or oral competency examination].

(2) In accordance with 42 C.F.R. 483.154(b)(1):

(a) An individual who obtains nurse aide training from an entity identified in Section 5(1) of this administrative regulation shall be permitted to choose between a final written or oral competency examination; and

(b)[.] The competency examination shall:

1. [(a)] Address each course requirement;

a. [1.] As specified in 42 C.F.R. 483.152(b); and

b. [2.] Identified in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program;

2. [(b)] Be developed from a pool of test questions, only a portion of which shall be used in any one (1) competency examination;

3. [(c)] Use a system that prevents disclosure of both the pool of questions and the individual competency examinations; and

4. [(d)] If oral, be read from a prepared text in a neutral manner.

(3) In accordance with 42 C.F.R. 483.154(c)(4), the skills demonstration portion of the nurse aide training and competency evaluation shall be:

(a) Performed in a facility or laboratory setting comparable to the setting in which the individual shall function as a nurse aide; and

(b) Administered by a registered nurse with at least one (1) year's experience in providing care for the elderly or chronically ill of any age.

(4) A competency examination candidate shall submit the following to the nurse aide training and competency evaluation program proctor:

(a) An unexpired state or federally-issued photo identification; and

(b) A social security card that has not been laminated.

(5) If a competency examination candidate's social security card states, "Not valid for employment without Immigration and Customs enforcement authorization", or contains a similar statement, the candidate shall present an employment authorization document issued by the Department of Homeland Security.

(6) A competency examination candidate's full name and middle initial shall be the same on each personal document presented to the nurse aide training and competency evaluation program proctor.

(7) In accordance with 42 C.F.R. 483.154(e):

(a) An individual shall pass the written or oral competency examination and the skills demonstration for satisfactory completion of the nurse aide training and competency evaluation program; and

(b) A record of successful completion of the nurse aide training and competency evaluation program shall be included in the nurse aide registry within thirty (30) days of the date of completion.

(8) In accordance with 42 C.F.R. 483.154(f), an agency that

administers the competency examination shall advise each individual who does not complete the examination satisfactorily:

(a) Of the areas which the individual did not pass; and

(b) That the individual has at two (2) additional opportunities to take the examination.

Section 8. State Nurse Aide Registry. (1) The department, through an interagency agreement with the Kentucky Board of Nursing, shall be responsible for establishing and maintaining a registry of all nurse aides who have:

(a) Satisfactorily completed a nurse aide training and competency evaluation program upon successful completion of the competency examination; or

(b) Been granted an exception pursuant to 42 C.F.R. 483.150(c).

(2) A finding of resident or patient neglect, abuse, or misappropriation of resident or patient property by a nurse aide shall be maintained on an abuse registry pursuant to 906 KAR 1:100.

Section 9. Reciprocity. (1) The department shall grant reciprocity for a nurse aide who is on another state's nurse aide registry if:

(a) The other state provides documentation that the individual is on its registry;

(b) An employment record provided to the department's nurse aide registry verifies that twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(c) The individual is not listed on the other state's registry of resident abuse, neglect, or misappropriation of resident property.

(2) The department shall not grant reciprocity for an individual whose name appears on any state's abuse registry.

Section 10. Reimbursement for Costs Incurred in Administering a Nurse Aide Training and Competency Evaluation Program. (1) Reimbursement to a nursing facility for costs associated with a nurse aide training and competency evaluation program shall be available:

(a) In an amount specified in subsection (2) of this section; and

(b) For a nurse aide who:

1. Is employed by the facility; or

2. Receives an offer of employment from the facility within twelve (12) months of completing a nurse aide training and competency evaluation program.

(2) The maximum amount of reimbursement available to a nursing facility for costs incurred by an individual who completes the nurse aide training and competency evaluation program shall be forty-five (45) cents per Medicaid patient day.

(3) To receive reimbursement, a nursing facility shall report:

(a) The number of Medicaid patient days on the Nursing Facility Supplemental Medicaid Schedule NF-7 (included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program) for the twelve (12) month period preceding October 1 of the current fiscal year, and

(b) The costs incurred for an aide to complete the nurse aide training and competency evaluation program on the MAP-576, Nurse Aide Training Expense Report and Authorization for Payment Form included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(4) The department shall not reimburse a nursing facility for a nurse aide if the nurse aide has been employed by another facility that received reimbursement for the aide's nurse aide training and competency evaluation program costs.

Section 11. Incorporation by Reference. (1) The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, March 2005 edition"; is incorporated by reference.

~~[(1) A participating nursing facility shall not use an individual as a nurse aide on a permanent basis for more than four (4) months if the individual:~~

~~(a) Has not completed the:~~

~~1. Nurse aide training and competency evaluation program; or~~

~~2. The competency program, if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or~~

~~(b) Has not met the competency evaluation prior to January 1, 1989.~~

~~(2) A facility shall not use an individual as a nurse aide on a temporary, per diem, leased or other nonfull-time basis if the person has not completed the:~~

~~(a) Nurse aide training and competency evaluation program; or~~

~~(b) Competency evaluation program.~~

~~Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility shall be required to provide and document, as specified in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, twelve (12) hours of ongoing staff development annually for each nurse aide.~~

~~Section 4. Minimum Curriculum and Content Requirements. (1) The nurse aide training program shall, at a minimum, consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.~~

~~(2) Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content shall be shown in the Medicaid Services Manual for the Nurse Aide Training and Competency Evaluation Program.~~

~~Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. (1) The nurse aide training program shall be conducted by:~~

~~(a) The Department for Technical Education;~~

~~(b) Nursing facility program;~~

~~(c) Community college;~~

~~(d) University program;~~

~~(e) A licensed proprietary education program;~~

~~(f) A licensed health care facility offering a nurse aide training program to its own employees; or~~

~~(g) A nonprofit, church related or tax supported program that is not identified in the above categories.~~

~~(2) Each entity specified in subsection (1) of this section that wishes to provide nurse aide training shall request and receive approval of the agency's training program by the department prior to operating the nurse aide training program in accordance with the criteria shown in the Medicaid Services Manual for Nurse Aide and Competency Evaluation Program.~~

~~(3) After initial approval of the training program, each program shall be monitored as follows:~~

~~(a) An approved nurse aide training program conducted by a nursing facility shall be monitored on site by the department during the regularly scheduled annual survey for compliance with conditions of participation. A self-evaluation shall be submitted to the department every two (2) years.~~

~~(b) An approved nurse aide training program conducted by the Department for Technical Education shall be monitored on site by the Cabinet for Workforce Development monitoring system at least every two (2) years. A self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews shall be compiled by the Department for Technical Education and forwarded to the department on an annual basis.~~

~~(c) The department shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department a self-evaluation in each year that an on-site review is not performed.~~

~~Section 6. Termination of Nurse Aide Training Programs. (1) The department shall terminate participation in the training program for a previously approved nurse aide training program that does not:~~

~~(a) Meet minimum requirements; and~~

~~(b) Submit an acceptable plan of correction.~~

~~(2) A nurse aide training program offered by or in a nursing facility shall not be approved if the facility falls within any of the prescribed clauses described in 42 U.S.C. 1396(r)(f)(2)(B)(iii)(I)(a), (b), and (c).~~

~~Section 7. Final Examination and Competency Evaluation. The Department for Technical Education or other qualified entity as~~

~~approved by the department shall be, by agreement with the department, responsible for the final written or oral examination and the skills demonstration portion of the competency evaluation.~~

~~Section 8. State Nurse Aide Registry. (1) The department, through an interagency agreement with the Division of Licensing and Regulation, Office of the Inspector General, shall be responsible for establishing and maintaining a registry of all nurse aides who have:~~

~~(a) Satisfactorily completed a nurse aide training and competency evaluation program;~~

~~(b) Satisfactorily completed a competency evaluation program; or~~

~~(c) Been granted an exception.~~

~~(2) The registry shall include specific documented findings by the Commonwealth of Kentucky of individual resident abuse or neglect, or misappropriation of resident property by nurse aides listed in the registry, determined in accordance with 42 C.F.R. 1396r(g), and a brief statement (if any) by the nurse aide disputing the finding. A finding shall be included on the registry after the nurse aide has been provided:~~

~~(a) At least ten (10) days advance notice of the proposed finding; and~~

~~(b) An opportunity for a hearing (if desired) for the nurse aide to rebut allegations.~~

~~(3) The Division of Licensing and Regulation shall disclose or divulge information as a result of an inquiry to the registry if the information disclosed concerning the finding also contains the following:~~

~~(a) The statement of rebuttal of the finding, if it was filed by the nurse aide; or~~

~~(b) A clear and accurate summary of the statement.~~

~~(4) The department through its agent may periodically notify other states or interested parties of the names of individuals who have completed the requirements to be placed on a nurse aide registry.~~

~~Section 9. Reciprocity. (1) A nurse aide who is on another state's nurse aide registry shall be granted reciprocity in Kentucky, if:~~

~~(a) The other state's registry provides appropriate written documentation showing the individual is on the other state's registry;~~

~~(b) An employment record provided to the Division of Licensing and Regulation verifies that twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and~~

~~(c) There is not documented findings on the registry of individual resident abuse or neglect, or misappropriation of resident funds for the individual on the registry.~~

~~(2) Reciprocity shall not be given to an individual whose name appears on another state's abuse registry.~~

~~Section 10. Incorporation by Reference. (1) "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program", March, 1997 Edition, Department for Medicaid Services, is incorporated by reference.]~~

(2) This material [It] 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: August 15, 2006
FILED WITH LRC: August 15, 2006 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Human Support Services
Division of Aging Services
(As Amended at ARRS, October 10, 2006)

910 KAR 1:260. Kentucky Family Caregiver Program.

RELATES TO: KRS Chapter 13B, 199.011(4), 205.455(4), 42 U.S.C. 601, 651, 1381, 3030s, 3030s -1
STATUTORY AUTHORITY: KRS 194A.050(1), 2006 Ky. Acts ch. 252 Part I.H.7.(7)
NECESSITY, FUNCTION, AND CONFORMITY: 2006 Ky. Acts ch. 252 requires the cabinet to promulgate administrative regulations to implement the Kentucky Family Caregiver Program providing assistance, including grants or vouchers, to grandparents who are primary caregivers of their grandchildren. KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation establishes the Kentucky Family Caregiver Program.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

(2) "District" is defined by KRS 205.455(4).

(3) "Federal poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U S. Department of Health and Human Services.

(4) "Grant" means a payment to a grandparent for services specified in Section 8(3)(a) or 9 of this administrative regulation and based on:

(a) Need; and

(b) Actual cost.

(5) "Household" means an individual or group of individuals who are living together in a principal residence as one (1) economic unit.

(6) "Household income" means all annual gross earned and unearned income received by a household, including a:

(a) Lump sum payment; or

(b) State or federal benefit assistance payment.

(7) "Local resolution" means a phone conversation or meeting between a grandparent and district to resolve the grandparent's dispute against denial of eligibility.

(8) "National Family Caregiver Support Program" means the program established by 42 U.S.C. 3030s-1 [is defined by 42 U.S.C. 3030s].

(9) "Respite assistance" means care provided by a caregiver or agency approved by a district:

(a) For a designated time period; and

(b) To temporarily relieve a grandparent who serves as primary caregiver to a grandchild.

(10) "Supplemental services" means the services that a grandparent may receive in accordance with Section 9 of this administrative regulation through application and grant or voucher process.

(11) "Support services" means the services that a grandparent may receive in accordance with Section 8 of this administrative regulation through application and grant or voucher process.

(12) "Voucher" means a payment made directly to a vendor for the services specified in Section 8(3)(a) and 9 of this administrative regulation.

Section 2. Eligibility. (1) To be eligible for the Kentucky Family Caregiver Program, a grandparent shall:

(a) Be a Kentucky resident;

(b) Be the primary caregiver for a grandchild;

(c) Be related to the grandchild by:

1. Birth:

2. Marriage; or

3. Adoption, if adoption occurs through the parent;

(d) Reside with the grandchild who:

1. Shall not be residing in the same household with the grandchild's parent, or

2. May reside in a house owned by the grandchild's parent;

(e) Not receive a monthly payment for Kinship Care in accordance with 922 KAR 1:030; and

(f) Not have annual household income that exceeds 150 percent of the federal poverty level.

(2) An applicant shall sign and submit to a district an "Application for Kentucky Family Caregiver Services."

(3) An applicant shall receive a written notice of eligibility or noneligibility from a district within thirty (30) days of meeting the requirements of subsections (1) and (2) of this section. [~~Eligibility for services shall be the date on which all eligibility factors are met.~~

~~(3) An applicant shall receive a written notice of eligibility or noneligibility:~~

~~(a) From a district, and~~

~~(b) Within thirty (30) days of:~~

~~1. Signing an "Application for Kentucky Family Caregiver Services"; and~~

~~2. A district's determination of eligibility.~~]

(4) A payment from the Kentucky Family Caregiver Program may affect the eligibility income requirements for receipt of a federal or state benefit assistance payment.

(5) If a child receives assistance from the Kentucky Children's Health Insurance Program, the child shall not be eligible to receive the medical services specified in Section 9(5) of this administrative regulation.

(6) National Family Caregiver Support Program participation shall not exclude participation in the Kentucky Family Caregiver Program.

Section 3. Application. A grandparent shall apply or reapply for the Kentucky Family Caregiver Program each fiscal year:

(1) Through a local district of residence; and

(2) By signing an "Application for Kentucky Family Caregiver Services".

Section 4. District Responsibilities. A district shall:

(1) Complete an assessment to include at a minimum [~~of~~] the following:

(a) Demographic information;

(b) Establishment of eligibility relationship between grandparent and grandchild;

(c) Documentation of annual household income, using:[~~:~~]

1. [~~With~~] A federal Tax form;

2. A W2;

3. A pay stub; or

4. Other documentation of monthly income;

(d) Living arrangements of household;

(e) Residency;

(f) Physical health of the grandparent and grandchild;

(g) Physical environment;

(h) Mental and emotional status of the grandparent; and

(i) Identification of a grandparent's problem or need by using a "Kentucky Family Caregiver Program Plan of Care" including:

1. Counseling in accordance with Section (8)(a) of this administrative regulation;

2. Supplemental services in accordance with Section 9 of this administrative regulation; and

3. Cost for each.

(2) Develop a:

(a) Policy and procedure for grandparent outreach of the Kentucky Family Caregiver Program;

(b) Policy and procedure for assurance of a grandparent's eligibility in accordance with Section 2(1) of this administrative regulation,

(c) Policy on client confidentiality and referrals;

(d) Process for use of assistance, including a grant or voucher;

(e) Process for billing a participating vendor for provided services; and

(f) Process for monitoring and evaluation of the program,

(3) Make payment for the services specified in Section 8(3)(a) and 9 of this administrative regulation through a:

(a) Voucher; or

(b) Grant;

(4) Document and maintain a case file for each grandparent including assignment of a case number;

(5) Provide the division with documentation of services provided and the number served through the Kentucky Family Caregiver Program [~~a report to the state in a format established by the division~~];

(6) Verify with a local department for community based services office:

(a) That a child or grandparent is not receiving a monthly payment specified in Section 2(1)(e) of this administrative regulation;

(b) Any type of state or federal benefit assistance payment a grandparent or grandchild is receiving; and

(c) Medical services a child receives through the Kentucky Children's Health Insurance Program;

(7) Provide for appeal procedures in accordance with Section 11 of this administrative regulation; and

(8) Provide referral and assistance to other community services needed by the grandparent or grandchild.

Section 5. Division Responsibilities. The division shall:

(1) Be the state-wide administrator for the Kentucky Family Caregiver Program;

(2) Monitor a district at least annually for assurance of [~~in~~] compliance with the program requirements of this administrative regulation;

(3) Allocate available funding; and

(4) Provide technical assistance, if needed.

Section 6. Kentucky Family Caregiver Payment. (1) To the extent funds are available, the maximum total of assistance per grandchild, including a grant or voucher, [~~per grandchild~~] shall be $750 in any one (1) fiscal year.

(2) Funds shall be allocated based on an identified need in accordance with Section 4(1) of this administrative regulation[~~:~~

~~(a) In accordance with Section 4(1)(e) of this administrative regulation; and~~

~~(b) Not to exceed $750~~].

(3) A grant or voucher shall not be given for services that occur before a district's establishment of a grandparent's eligibility.

(4) Prior approval with a district for counseling and supplemental services shall be required before actual purchase.

(5) A waiting list shall be implemented for an applicant that may exceed the allocated funding and be:

(a) Accepted:

1. In accordance with Section 2(2) of this administrative regulation; and

2. As funds are available; and

(b) Maintained for only the current fiscal year.

Section 7. Relocation. If a grandchild receiving services moves to another district within the same fiscal year, the grandparent may receive assistance, including a grant or voucher payment:

(1) Minus an amount already received in the current fiscal year; and

(2) If:

(a) The eligibility requirements of Section 2(1) of this administrative regulation are met; and

(b) There are available funds for the fiscal year in the new district.

Section 8. Support Services. Support services shall include:

(1) Information about available services;

(2) Assistance in gaining access to services; and

(3) Assistance to the grandparent in decision-making and problem-solving relating to a caregiving role including:

(a) Individual counseling;

(b) Organization of a support group; and

(c) Caregiver training.

Section 9. Supplemental Services. Supplemental services related to the child shall include:

(1) Child clothing;

(2) Respite assistance for the grandparent;

(3) Educational supplies or assistance;

(4) Required legal services, excluding unlawful activity;
(5) Medical and dental services, except for copays and premiums; and
(6) Other services for a grandchild authorized by the district.

Section 10. Grandparent Responsibilities. A grandparent shall:
(1) Provide a district with the information specified in Section 2(1) of this administrative regulation;
(2) Comply with a district's assessment process as established in Section 4(1) of this administrative regulation;
(3) Comply with the district's policies for expenditures of assistance, including a grant or voucher;
(4) Comply with appeal procedures of Section 11 of this administrative regulation; and
(5) Notify the district immediately of a change in status that is in noncompliance with the eligibility requirements specified in Section 2(1) of this administrative regulation.

Section 11. Appeal Procedure. (1) If eligibility for services is denied, a district shall inform the applicant by written notice:
(a) As specified in Section 2(3) of this administrative regulation; and
(b) Accompany with the notice a "Request for Hearing, Local Resolution".
(2)(a) An applicant may complete and file the "Request for Hearing, Local Resolution" with the district within thirty (30) days after receipt of the written notice for denial of eligibility.
(b) If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery.
(3) Upon receipt of the "Request for Hearing, Local Resolution", the district shall:
(a) Review; and
(b) If requested, schedule a local resolution with the applicant.
(4) The local resolution shall be:
(a) Held with the applicant within ten (10) days of receipt of the request, and
(b) Conducted by a district regional manager or designee.
(5) Within five (5) days of completion of the local resolution, the district regional manager or designee shall:
(a) Issue a decision by written notification to the return address specified on the "Request for Hearing, Local Resolution"; and
(b) Specify whether denied eligibility is rescinded.
(6) If an applicant requests a hearing, the district shall submit to the Families and Children Administrative Hearings Branch the "Request for Hearing, Local Resolution", and results of a local resolution, if any:
(a) At 275 East Main Street, HS1-ED, Frankfort, Kentucky 40621, and
(b) Within ten (10) days of receipt.
(7) The Hearings Branch shall:
(a) Appoint a hearing officer; and
(b) Proceed pursuant to KRS 13B.050.
(8) A hearing shall be held at a grandparent's local district of residence.
(9) The hearing officer shall issue a recommended order pursuant to KRS 13B.110(1).
(10) After a hearing, the cabinet shall collect exceptions to recommended orders;
(11) A final order shall be issued pursuant to KRS 13B.120.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Kentucky Family Caregiver Services", edition 11/06;
(b) "Kentucky Family Caregiver Program Plan of Care", edition 11/06; and
(c) "Request for Hearing, Local Resolution", edition 11/06.
(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.
910 KAR 1:260

MARK BIRDWHISTELL, Secretary
MARLA MONTELL, Commissioner
BILL COOPER, Director
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 14, 2006 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, October 10, 2006)

921 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)
STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Food Stamp Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.

Section 1. Definitions. (1) Employment and training program" or "E&T" means a program with work experience, education, or training components, designed to assist able-bodied food stamp recipients in obtaining employment and becoming self-sufficient.
(2) "Exempt" means excused by the agency from participation in the E&T [~~employment and training program~~].
(3) [~~(2)~~] "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.
(4) [~~(3)~~] "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified a household member [~~not meeting exemption criteria~~] in subsection (4) of this section, shall register for work:
(a) At the time of initial application for food stamps; and
(b) Every twelve (12) months following the initial application.
(2) Work registration shall be completed by the:
(a) Member required to register; or
(b) Person making application for the household.
(3) Unless otherwise exempt, a household member excluded from the food stamp case shall register for work during periods of disqualification. An excluded person may be an:
(a) Ineligible alien; or
(b) Individual disqualified for:
1. Refusing to provide or apply for a Social Security number; or
2. An intentional program violation.
(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) [~~The following individuals~~] shall be exempt from work registration requirements.[:
~~(a) A person:~~
~~1. Younger than sixteen (16) years of age, or~~
~~2. Sixty (60) years of age or older;~~
~~(b) A person age sixteen (16) or seventeen (17) who is:~~
~~1. Not a head of a household;~~
~~2. Attending school, or~~
~~3. Enrolled in an employment training program on at least a half-time basis;~~
~~(c) A person with a physical or mental disability;~~
~~(d) A household member subject to and complying with a work requirement in the Kentucky Transitional Assistance Program or~~

~~"K-TAP";~~

~~(e) A parent or other household member who is responsible for the care of:~~

~~1. A dependent child under age six (6); or~~

~~2. An incapacitated person;~~

~~(f) A person who:~~

~~1. Receives unemployment compensation; or~~

~~2. Has applied for, but not yet received, unemployment compensation, if the person was required to register for work with the Department for Employment Services as a part of the unemployment compensation application process;~~

~~(g) A regular participant in a:~~

~~1. Substance abuse program; or~~

~~2. Alcohol treatment and rehabilitation program;~~

~~(h) A person who is employed or self-employed and:~~

~~1. Working at least thirty (30) hours weekly; or~~

~~2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;~~

~~(i) A migrant or seasonal farm worker who:~~

~~1. Meets the criteria in paragraph (h) of this subsection, and~~

~~2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or~~

~~(j) A student enrolled at least half time in a recognized school, training program, or institution of higher education, if the student has met the eligibility conditions in 921 KAR 3:025, Section 3.]~~

(5) A household member who loses exemption status due to a change in circumstances [~~subject to the reporting requirements of the Food Stamp Program~~] shall register for [~~to~~] work in accordance with 7 C.F.R. 273.7(b)(2). [~~at the:~~

~~(a) Time the change is reported, if the change is a:~~

~~1. Loss of employment that results in a loss of income;~~

~~2. Change in household composition, including the addition or loss of a household member; or~~

~~(b) Household's next recertification, if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.~~]

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi)[~~(iv)~~], accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h) [~~Section 8 of this administrative regulation~~], at a wage not lower than the state or federal minimum wage; or [~~and~~]

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T [~~Food Stamp Employment and Training~~] Program, if assigned by the cabinet.

(7) Household member making a joint application for SSI, as defined in 921 KAR 3:010, and food stamps, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6) [~~shall be waived for a household member applying, at a Social Security Administration Office, for both supplemental security income and food stamps at the same time. The waiver shall expire upon completion of the social security income determination~~].

(8) The E&T [~~food stamp employment and training~~] worker shall explain to the food stamp applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 3. E&T [~~Employment and Training~~] Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T [~~Food Stamp Employment and Training~~] Program.

(2) An E&T [~~A food stamp employment and training~~] participant shall:

(a) Attend and complete an initial assessment interview;

(b) Be placed in:

1. VEST; or

2. WEP;

(c) Receive a [~~twenty-five (25) dollar per month~~] reimbursement for actual [~~miscellaneous~~] expenses incurred while participating in the E&T [~~Food Stamp Employment and Training~~] Program up to twenty-five (25) dollars per month, if otherwise eligible, and

(d) Complete and return to the cabinet a FSET-108, "Job Search Contact Report", or a FSET-145, "Employment and Training Program Activity Report", [~~written verification of Employment and Training Program activities~~] in order to verify and be reimbursed for participation expenses, as specified in paragraph (c) of this subsection.

(3) A participant who withdraws or is terminated, voluntarily or involuntarily, from the program, shall:

(a) Be provided with a [~~an~~] FSET-119, **Food Stamp** "Employment and Training Program Notification of Termination"; and

(b) Complete and file the **FSET-119 or other documentation of expenses** [~~applicable form~~] with the cabinet in order to be reimbursed in accordance with subsection (2)(c) of this section.

Section 4. Components. (1) A county offering the E&T [~~Employment and Training~~] Program shall offer the following services and activities:

(a) The VEST Program consisting of:

1. Vocational school; or

2. On-the-job training; and

(b) The WEP Program consisting of:

1. Job search; and

2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available;

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search;

(c) Complete and file with the cabinet the FSET-108, [~~"Job Search Contact Report"~~];

(d) Provide written verification by the WEP provider of E&T [~~Employment and Training~~] Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program Table, incorporated by reference in this administrative regulation.

(5) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program Table [~~, incorporated by reference in this administrative regulation~~].

Section 5. Conciliation. (1) If a participant fails to comply with the E&T [~~Food Stamp Employment and Training~~] Program:

(a) The participant shall be mailed a FSET-102 "Conciliation Contact and Request for Information" form; and

(b) A conciliation period shall be initiated.

(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days, during which time the E&T [~~food stamp employment and training~~] worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;

(b) Encourage the participant to resume an E&T Program [~~food~~

~~stamp employment and training~~] activity; or

(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.

(4) If the participant resumes the E&T Program [~~food stamp employment and training~~] activity, a sanction shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with:

1. Work registration requirements as established in Section 2 of this administrative regulation; or

2. E&T [~~Employment and training~~] requirements as established in Section 3 of this administrative regulation; or

(b) Household member has, as described in Section 9 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced his work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), [~~The determination of~~] good cause shall be granted for [~~include consideration of~~] circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; and

(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;

(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) Disqualifications shall be imposed on a household member who[~~is~~].

(a) 1. Is a mandatory participant, and

b. [~~who~~] Fails to comply with the work registration or E&T program requirements [~~food stamp employment and training requirements, including work registration~~]; or

(b) Determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 [~~9~~] of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program shall be ineligible to receive food stamp benefits until the latter of the:

(a) Date the individual complies; or

(b) Following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period specified in subsection (2) of this section; and

2. [~~(c)~~] Complies with the requirements of:

a. [~~1.~~] Work registration; or

b. [~~2.~~] The Employment and Training Program.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size when determining the food stamp allotment.

Section 8. [~~Unsuitable Employment. Employment shall be considered unsuitable if:~~

~~(1) The wage offered is less than the highest of the following:~~

~~(a) The applicable state or federal minimum wage; or~~

~~(b) Eighty (80) percent of the federal minimum wage if the federal or state minimum wage is not applicable;~~

~~(2) The employment offered is on a piece rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section;~~

~~(3) The household member, as a condition of employment or continuing employment is required to join, resign from, or refrain from joining a legitimate labor organization;~~

~~(4) The employment offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 U.S.C. 178 and 45 U.S.C. 152;~~

~~(5) The household member or worker involved demonstrates that the:~~

~~(a) Degree of risk to health and safety is unreasonable;~~

~~(b) Member is physically or mentally unsuited to perform the employment as documented by:~~

~~1. Medical evidence; or~~

~~2. Reliable information from another source;~~

~~(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience;~~

~~(d) Daily commuting time exceeds two (2) hours per day, not including transportation of a child to and from a child care facility;~~

~~(e) The distance to the place of employment:~~

~~1. Prohibits walking; and~~

~~2. Public and private transportation to the job site is unavailable; or~~

~~(f) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.~~

~~Section 9.~~] Disqualification for Voluntary Quit or Reduction in Work Effort. (1) **Within thirty (30) days prior to application for food stamps or any time after application, an** [An] individual shall not be eligible to participate in the Food Stamp Program if the individual[~~, within thirty (30) days of application for food stamps or anytime after application,~~] voluntarily and without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less then the federal minimum wage times thirty (30) hours.

(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

[~~(3) Determination of good cause for leaving employment shall include consideration of the following:~~

~~(a) Circumstances beyond the individual's control, such as:~~

~~1. Illness of the individual;~~

~~2. Illness of another household member requiring the presence of the individual;~~

~~3. A household emergency;~~

~~4. Unavailability of transportation; or~~

~~5. Lack of adequate care for a child of age six (6) to twelve (12) who is in the care of the individual;~~

~~(b) Employer-initiated discrimination or denial of the individual's civil rights, as protected by federal and state law embodied in KRS Chapter 344;~~

~~(c) Work demands or conditions that render continued employment unreasonable, such as working in the absence of timely payment;~~

~~(d) Either the individual's or another household member's:~~

~~1. Acceptance of other employment requiring the individual to leave employment, such as employment located in another county; or~~

~~2. Enrollment for at least half-time attendance in a recognized school, training program, or institution of higher learning requiring the individual to leave employment, such as location of the educational institution located in another county;~~

~~(e) Resignation of a person under age sixty (60) which is recognized by the employer as retirement;~~

~~(f) Employment which becomes unsuitable, as specified in~~

~~Section 8 of this administrative regulation, after the acceptance of the employment;~~

~~(g) Acceptance of a bona fide offer of other employment:~~

~~1. Of more than thirty (30) hours per week; or~~

~~2. In which projected weekly earnings are equivalent to or greater than the federal minimum wage multiplied by thirty (30) hours; and~~

~~3. Due to circumstances not in the household member's control, the employment:~~

~~a. Does not materialize; or~~

~~b. Results in employment not meeting the wage or hour requirement in subparagraphs 1 and 2 of this paragraph, or~~

~~(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another, such as migrant farm labor or construction work.~~]

Section 9. [~~10.~~] Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation, eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit; or

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification.

(2) An individual may reestablish participation in the Food Stamp Program following a disqualification period, as established in Section 7(2) of this administrative regulation, if the individual applies again and is determined to be eligible.

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in the Food Stamp Program.

Section 10. [~~11.~~] Hearing Process. If aggrieved by an action that affects participation, a work registrant may request a hearing in accordance with 921 KAR 3:070.

Section 11. [~~12.~~] Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 12. [~~13.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FSET-102, Conciliation Contact and Request for Information", edition 11/06 [~~10/02~~];

(b) "FSET-108, Job Search Contact Report", edition 11/06 [~~10/02~~];

(c) "FSET-119, Food Stamp Employment and Training Program Notification of Termination", edition 11/06 [~~10/02~~]; [~~and~~]

(d) "FSET-145, Employment and Training Program Activity Report", edition 11/06; and

(e) "The Work Experience Program Table", edition 3/97.

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

TOM EMBERTON, Jr., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: August 14, 2006

FILED WITH LRC: August 14, 2006 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 PUBLIC COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET
Office of Investigations
(Amended After Comments)

500 KAR 13:020. Office of Investigations ~~[Internal Investigations Unit]~~.

RELATES TO: KRS 15A.065 ~~[Chapter 15A]~~

STATUTORY AUTHORITY: KRS 15A.160~~[, U.S. vs. Commonwealth, Civil Action No. 3-95-CV-7575]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Office of Investigations, Office of the Secretary. ~~["Office of Investigations[Internal Investigations Unit]" (hereinafter "OOI[IIU]") Office of the Secretary. The "OOI" may ["IIU" shall] conduct investigations of [all] special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet. The OOI may investigate any other issues as deemed necessary at the request of the Commissioner of the Department of Juvenile Justice or with the approval of the Executive Director of OOI. Any allegation of an alleged special incident not investigated by OOI shall be referred by the Executive Director of OOI to be investigated by another individual or agency.]~~

Section 1. Definitions. (1) "Exonerated" means the incident occurred, but the accused's actions were justified or proper.

(2) "Facility" means a group home, day treatment, residential treatment, or youth development center, a detention center, or any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of youth.

(3) "Initiation" means any action by the Office of Investigations intended to ensure the immediate safety of the alleged victim or to obtain evidence or information relevant to the investigation.

(4) "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.

(5) "Offender" means a person who:

(a) Is employed at, volunteers in, visits, or contracts with a facility; and

(b) Against whom an allegation of a special incident has been made.

(6) OOI means Office of Investigations, Office of the Secretary, Justice and Public Safety Cabinet.

(7) "Pending further investigation" means a critical witness or offender can not be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond control of OOI, that prevents OOI from making a final determination for its finding.

(8) "Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by an offender, including if an offender:

(a) Uses inappropriate or excessive force that results in injury;

(b) Uses inappropriate or excessive force that could result in an injury;

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the offender;

(d) Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices and dictated by policy of the Department for Juvenile Justice;

(e) Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;

(f) Allows or encourages a resident to:

1. Use drugs or alcohol;

2. Gamble; or

3. Engage in other illegal activity;

(g) Uses humiliating, demeaning, profane, or racially charged language directed at a resident;

(h) Uses verbal threats of harm directed at a resident;

(i) Exhibits a pattern of harassing conduct directed at a resident;

(j) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;

(k) Accepts a bribe from a resident or indicates a bribe would be accepted;

(l) Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, and 530.070;

(m) Enters into a business relationship with a resident; or

(n) Extends unearned special privileges to a resident in return for something done for staff.

(9) "Substantiated" means that an incident occurred:

(a) By an admission of the person responsible; or

(b) By a preponderance of the evidence.

(10) "Unfounded" means the charges are false or the employee was not involved in the incident.

~~["Facility" includes but is not limited to [means] a group home, day treatment, residential treatment, or youth development center,][or][a detention center, or any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of youth.~~

~~(2)] ["Founded" means that a special incident occurred:~~

~~(a) By an admission of the person responsible; or~~

~~(b) By a preponderance of the evidence.~~

~~(3)] "Initiation" means any action by the Office of Investigations] [Internal Investigations Unit][intended to ensure the immediate safety of the alleged victim or to obtain evidence or information relevant to the investigation,~~

~~(3)][(4)]["OOI"]["IIU"][means Office of Investigations][Internal Investigation Unit][, Office of the Secretary, Justice Cabinet.~~

~~(4)][(5)]["Offender"]["Perpetrator"][means a person who is [an individual][employed at, volunteers in, visits, contracts with, or is a resident of][or a volunteer at][a facility against whom an allegation of a special incident has been made][founded by the Internal Investigations Unit].~~

~~(5)][(6)]["Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by an offender [a facility staff person]. It includes but is not limited to incidents when an offender][a facility staff person][:~~

~~(a) Uses inappropriate or excessive force that results in an injury.~~

~~(b) Uses inappropriate or excessive force that could result in an injury.~~

~~(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the offender [perpetrator] or another person.~~

~~(d) Uses inappropriate consequences as punishment such as excessive exercise, harsh physical labor or other physical consequences outside accepted practices of the Department for Juvenile Justice.~~

~~(e) Does not provide appropriate supervision, medical care, food, clothing, shelter or education;~~

~~(f) Allows or encourages a resident to:~~

~~1. Use drugs, alcohol or gamble, or~~

~~2. Engage in other illegal activity;~~

~~(g) Uses humiliating, demeaning, profane or racially charged language or gestures directed at a resident;~~

~~(h) Uses verbal threats of harm directed at a resident;~~

~~(i) Exhibits a pattern of harassing conduct directed at a resident.~~

~~(j) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;~~

~~(k) Accepts a bribe from a resident or indicates a bribe would be accepted.~~

~~(l) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070.~~

~~(m) Enters into a business relationship with a resident;~~

~~(n) Extends unearned special privileges to a resident in return for something done for staff.~~

~~(6)~~][~~(7)~~]["Unfounded" means ~~the charges are false or the employee was not involved in the incident.~~

~~(7) "Substantiated" means that an incident occurred:~~

~~(a) By an admission of the person responsible; or~~

~~(b) By a preponderance of the evidence.~~

~~(8) "Exonerated" means the incident occurred, but the accused's actions were justified or proper.~~

~~(9) "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.~~

~~(10) "Pending further investigation" means a critical witness or offender can not be located or refuses to cooperate at the time of the investigation, or there is other interference with the investigation, beyond the control of the OOI, that prevents OOI from making a final determination for its finding~~][~~insufficient evidence was found to indicate that a special incident occurred~~][~~-~~]

Section 2. Receiving a Report. The Office of Investigations [~~(OOI)~~] [~~Internal Investigations Unit (IIU)~~] shall accept reports of special incidents involving residents in **a facility** [~~juvenile residential treatment and youth development centers, day treatment, group homes and detention centers, or any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice (DJJ) for the placement of youth~~].

(1)~~(a)~~ A toll-free [~~An 800~~] number shall be made available to all staff and residents in **facilities** [~~juvenile residential treatment and youth development centers, group homes, and detention centers~~] to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours.

(b) [~~(2)~~] The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:

1. [~~(a)~~] The nature and extent of the special incident;

2. [~~(b)~~] The causes of the special incident;

3. [~~(c)~~] The location of the alleged victim;

4. [~~(d)~~] Any witnesses to the alleged special incident;

5. [~~(e)~~] The present danger to the alleged victim;

6. [~~(f)~~] The **offender** [~~person responsible for the alleged special incident~~];**and**

7. [~~(g)~~] The reporting person's identity and relationship to the victim.

(2) [~~(3)~~] Anonymous reports which give sufficient information and allege a special incident **shall be accepted** [~~may~~] [~~shall~~] [~~be investigated~~].

(3) [~~(4)~~] Referrals from any other source **which give sufficient information and allege a special incident shall be accepted.**

Section 3. Investigation of Reports and Special Incidents **(1)** The OOI may investigate all reports that meet the definition of a special incident. Any allegation of an alleged special incident not investigated by OOI shall be referred by the Executive Director of OOI to another **appropriate** individual or agency **for investigation.**

(2) The OOI may [~~The IIU shall not~~] investigate **a report or allegation involving a person who is employed at, volunteers in, visits, or contracts with a facility that does** [~~reports or allegations that do~~] not meet the definition of a special incident at the request of the Department of Juvenile Justice Commissioner or with the approval of the Executive Director of OOI. **A report or allegation not investigated by OOI may be referred by the Executive Director of OOI to another appropriate individual or agency** [~~Such reports or allegations may~~][shall][~~be referred to other appropriate agencies~~] [resources].

Section 4. Time Frames for Investigating [~~of~~] Reports of Suspected [~~suspected~~] Special **Incidents** [~~Incident(s)~~] [~~Incident~~]. Following the receipt of the report, the OOI-2 [~~IIU-2~~], Special Incident Reporting Form, [~~herein incorporated by reference~~] shall be completed and the report investigated **or referred in accordance with Section 3 of this administrative regulation,** OOI investigations shall be conducted according to the following time frames:

(1) If the report indicates the resident is in imminent danger, the investigation shall be initiated within one (1) hour and personal contact made with the alleged victim within twenty-four (24) hours;

(2) If the report does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(a) Issues to be considered in determining how soon personal contact **is** [~~should be~~] made **shall** include:

1. The nature of the allegation;[~~,~~]

2. How recently the alleged incident occurred; and

3. The measures taken by the facility to ensure the safety of the resident.

(b) Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(3) If the report indicates that the victim is no longer in a **facility** [~~residential treatment or youth development center, group home or detention center~~], the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

(4) The time frames **shall** begin **when** [~~at the time~~] the report is received by the OOI [~~IIU~~] staff.

Section 5. Initial Investigation. **If investigating an allegation or report** [~~Upon deciding to investigate an allegation~~], an OOI [~~After receiving a report of an alleged special incident the IIU~~] investigator shall]

(1) Complete the OOI-2; [~~IIU-2~~] [~~-~~]

(2) Report any [~~Forward all alleged~~] special incidents as required by KRS 620.030 and 620.040; [~~to local law enforcement or the Kentucky State Police and the local county attorney~~] [~~-~~]

(3) Notify the Commissioner of the Department of Juvenile Justice or designee of the report;[~~-~~]

(4) Interview the victim privately;[~~-~~]

(5) Interview the alleged offender; [~~perpetrator~~] [~~-~~]

(6) Interview appropriate witnesses;[~~-~~]

(7) Review documentation relevant to the incident; **and** [~~-~~]

(8) Take possession of and preserve appropriate evidence.

Section 6. [~~-~~] Determining the Validity of the Report. After the **initial investigation** [~~interviews and all the necessary information is gathered~~] the investigator shall.

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances which are documented, **such as law enforcement action, court proceedings, or investigator workload issues**. The report shall contain:

(a) The information gathered during the investigation; **and**

(b) A recommendation regarding the validity of the allegation **as substantiated, unfounded, exonerated, not substantiated, or pending further investigation;** [~~as founded or unfounded~~][~~-~~]

(2) Submit the report through supervisory channels within OOI and legal counsel for the Justice and Public Safety Cabinet for review and approval;[~~-~~]

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice;[~~-~~]

(4) Forward all completed investigations that are substantiated acts of abuse or neglect of a child:

(a) [~~that meet the definition of an abused or neglected child~~] In accordance with KRS 620.030 [~~in KRS 620.020~~] to the Cabinet for Health and Family Services; **and**

(b) [~~appear to meet the definition of an abused or neglected child in KRS 600.020 to the Cabinet for Families and Children~~][~~-~~]

[~~(5) Forward all completed investigations of physical abuse, sexual abuse, or neglect that are substantiated~~] [~~founded~~] To the local county attorney, [~~and/or local~~] law enforcement, or the Kentucky State Police.

~~[(6) Forward all completed investigations to the Juvenile Services Review Board as required by U.S. v. Commonwealth No. 3:95-CV-7575.~~

~~(a) The board shall make a determination of whether the facts support a finding that a special incident occurred; and~~

~~(b) The board shall recommend disciplinary action.~~

~~(c) The determination and recommendations by the board shall be forwarded to the Commissioner of the Department of Juvenile Justice.]~~

Section 7. Incorporation by Reference.

(1) "OOI-2 [JJU-2], Special Incident Reporting Form", 7/06, [(5/99)] [, Justice Cabinet,] is incorporated by reference.

(2) This material [It] may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes [403 Wapping] Street, [2d Floor Bush Building,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

BG NORMAN E. ARFLACK, Secretary

APPROVED BY AGENCY: September 22, 2006

FILED WITH LRC: September 25, 2006, at 11 a.m.

CONTACT PERSON: Jeff Middendorf, Justice Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-7554, fax (502) 564-4840.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Middendorf

(1) Provide a brief summary of:

(a) What this administrative regulation does: Regulation ensures prompt and thorough investigation of all alleged special incidents in juvenile residential treatment and youth development centers, group homes, and juvenile detention centers operated by the Department of Juvenile Justice.

(b) The necessity of this administrative regulation: Failure to implement the regulation could result in residents not being adequately protected in relation to special incidents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Secretary of the Justice Cabinet has the authority to implement these regulations under KRS 15A.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It allows the secretary to promulgate administrative regulations to allow for investigations and findings by the Office of Investigations within the Justice and Public Safety Cabinet.

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

(a) How the amendment will change this existing administrative regulation: Amending the regulation helps ensure that the investigations of all alleged special incidents in juvenile residential treatment and youth development centers, group homes, and juvenile detention centers operated by the Department of Juvenile Justice are more thorough. It gives the investigator additional tools for assessing allegations, allowing a more specific response for each finding.

(b) The necessity of the amendment to this administrative regulation: Failure to implement the regulation could result in ineffectual determinations that do not fully or correctly explain the agency's findings. This could adversely affect youth or employees if the findings are misconstrued.

(c) How the amendment conforms to the content of the authorizing statutes: The secretary is permitted to promulgate administrative regulations for the Justice and Public Safety Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: It allows the secretary to promulgate administrative regulations to allow for more effective and precise investigations and findings by the Office of Investigations within the Justice and Public Safety Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It affects all juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The Office of Investigations will be able to more accurately relate their findings, but the juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice will not have to take any additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice will be better able to deal with employee conduct and better able to protect its youth.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund dollars would be used if needed, but none are expected to 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: It will not be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It did not..

(9) TIERING: Is tiering applied? No, all juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice are treated equally. There is no disparate treatment within the Office of Investigations of cases investigated that would necessitate tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Juvenile Justice and the Office of Investigations, both within the Justice and Public Safety Cabinet, are the only government entities impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(Amended After Comments)

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.1041, 351.175, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet [~~Commissioner of the Department of Mines and Minerals~~] to promulgate administrative regulations [~~he deems~~] necessary and suitable for the proper administration of KRS Chapter 351 [~~351.090 to 351.9901~~]. KRS 351.025(2) requires the Department for Natural Resources [~~of Mines and Minerals~~] to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of **Kentucky** [~~if an owner or part owner intentionally orders~~] mine safety laws [~~to be violated~~] that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) requires the imposition of civil monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.180. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a licensed premises [~~, upon an adjudication by the Mine Safety Review Commission that an owner or part owner of a licensed premises has intentionally ordered this type of violation~~].

Section 1. Definitions. (1) "First offense" means the first violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious **physical** injury or death, as adjudicated by the Mine Safety Review Commission, including but not limited to failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(2) "Licensed facility" shall have the same meaning as the term "licensee" as that term is defined at KRS 351.010(1)(m) and 352.010(1)(r).

(3) "Licensed premises" shall have the same meaning as the term "licensee" as that term is defined at KRS 351.010(1)(m) and 352.010(1)(r).

(4) "Mine ventilation plan" means the ventilation plan, **including any revisions** and any revision to the mine ventilation plan approved by the United States Mine Safety and Health Administration.

(5) "Related successor" means an entity that obtains a license for a mine **where that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location** [~~that is owned by one or more owners or part owners of a previous licensee at the same location~~].

(6) "Second offense" means the second violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious **physical** injury or death, as adjudicated by the Mine Safety Review Commission, including but not limited to failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(7) "Subsequent offense" means any violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious **physical** injury or death, as adjudicated by the Mine Safety Review Commission, including but not limited to failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(8) Third offense" means the third violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious **physical** injury or death, as adjudicated by the Mine Safety Review Commission, including but not limited to failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws. (1) If [~~an owner or part owner of~~] a licensed premises violates any mine safety law which places a miner in imminent danger of serious **physical** injury or death, which is [~~commits~~] a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may place the licensed premises on probation for a period of time to be determined at the discretion of the commission, pursuant to KRS 351.194(5). The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days.

(2) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, including the suspension or revocation of the mine's license. If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3) The department may file charges against a licensed premises for any alleged violation of its probationary terms. Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4) If [~~an owner or part owner of~~] a licensed premises violates any mine safety law which places a miner in imminent danger of serious **physical** injury or death which is [~~commits~~] a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may suspend or revoke the mine's license for a period of not less than two (2) calendar years, or for a greater period of time, pursuant to KRS 351.194(5) and (6). The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days.

(5) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension. If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing [~~Department of Mine and Minerals~~] for the reinstatement of its mine license at the end of the revocation period. The Office of Mine Safety and Licensing [~~department~~] may grant or deny the application. The office may grant the application only if the licensed premises is in full compliance with any orders of the Mine Safety Review Commission.

(6) Upon the adjudication by the Mine Safety Review Commission of a third offense by [~~the owner or part owner of~~] a licensed premises for a violation of any mine safety law which places a miner in imminent danger of serious **physical** injury or death, the commission shall revoke the mine's license for a period of not less than three (3) calendar years, or for a greater period of time, pursuant to KRS 351.194(5) and (6), up to and including a permanent revocation with no possibility of reinstatement. If the revocation is

for a period of less than a permanent revocation with no possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing [~~Department of Mines and Minerals~~] for the reinstatement of its mine license at the end of the revocation period. The Office of Mine Safety and Licensing [~~department~~] may grant or deny the application. The office may grant the application only if the licensed premises is in full compliance with any orders of the Mine Safety Review Commission. If a third offense is committed by [~~an owner or part owner of~~] a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days.

(7) If a licensed premises commits a violation of any mine safety law which results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility for reinstatement. If the commission suspends the mine's license, it shall be automatically reinstated at the end of the period of suspension. If the commission revokes the mine's license for a period of less than a permanent revocation with no possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period. The Office of Mine Safety and Licensing may grant or deny the application. The Office may grant the application only if the licensed premises is in full compliance with any Orders of the Mine Safety Review Commission. The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days.

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), [~~or~~] (6), or (7) of this section is subsequently sold or goes out of business, any penalties imposed on that licensed premises for those violations shall be imposed upon any entity that is determined by the commission to be [~~the legal~~] a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or his or her designee shall assess monetary penalties to a licensed facility which has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury as follows:

(a) If the licensed facility has had no previous violations **during the previous twenty-four (24) months** relating to roof control or mine ventilation plans that could lead to imminent danger or serious physical injury, the penalty shall be not [~~less than $1,000 nor~~] more than $2,500.

(b) If the licensed facility has had one prior offense **during the previous twenty-four (24) months** relating to the violation of the roof control or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty shall be not [~~less than $2,500 nor~~] more than $4,000.

(c) If the licensed facility has had two (2) or more offenses relating to a violation **during the previous twenty-four (24) months** of the roof control or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty shall be not [~~less than $4,000 nor~~] more than f$5,000.

(d) In the event that the violation of the roof control or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be $5,000, notwithstanding whether the licensed facility has been previously cited for such violation or assessed a penalty pursuant to this section.

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

(1) The licensed premises' cooperation with investigators;

(2) The severity of the harm done, such as whether the violation resulted in:

(a) Death;

(b) Serious physical injury; or

(c) The placement of an individual in imminent harm;

(3) The licensed premises' acceptance of responsibility for its actions;

(4) The licensed premises' history of violations;

(5) The licensed premises' adjudicated violations in other states;

(6) Any mitigating circumstances; and

(7) Any aggravating circumstances.

(2) Notification. The commissioner or his or her designee shall notify a licensed facility that has been assessed a penalty to this section of the amount of the assessment.

(3) Service. The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed. Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay. Service shall be made by one (1) or more of the following methods:

(a) The commissioner or his or her designee may place a copy of the notice of proposed assessment in an envelope, and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include therein the fact of mailing and the return receipt, when received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. Service by certified mail is complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

(b) The commissioner or his or her designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver. The licensed facility issued a notice of proposed assessment may choose not to contest the assessment. **Failure to file a petition pursuant to paragraph (b) of this subsection shall be deemed a waiver.** [~~and~~] A final order shall be entered by the Mine Safety Review Commission finding that:

1. The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment; and

2. The fact of the violation cited in the noncompliance or closure order is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

4. That the violation is a first, second, third or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing **within thirty (30) days of the receipt of the assessment** in accordance with 825 KAR 1:020.

(5) Nothing contained within this section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the imposition and enforcement of sanctions against licensed facilities for failure to comply with the re-

quirements for reporting an accident. (1) General. Whenever the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements set forth in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined at the discretion of the commission. The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than $100,000 for the failure.

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) **Appropriateness of the penalty** ~~[Size of the mine]~~. Up to fifteen (15) points shall be assigned for the size of the mine. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one full calendar year, the tonnage prorated to an annual basis. Points shall be assigned as follows:

1. 0-300,000 tons, zero (0) points.
2. 300,000-500,000 tons, five (5) points.
3. 500,000-1 million tons, ten (10) points.
4. Over 1 million tons, fifteen (15) points.

(b) History of previous violations. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period. Points shall be assigned as follows:

1. 1-5 previous violations, zero points.
2. 6-10 previous violations, five (5) points.
3. 11-20 previous violations, ten (10) points.
4. 21-30 previous violations, fifteen (15) points.
5. Over 30 previous violations, twenty (20) points.

(c) Negligence. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident. Points shall be assigned as follows:

1. No negligence. There is no negligence on the part of the licensee when it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence.

2. Negligence. There is negligence when the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence.

3. Reckless disregard. There is reckless disregard when the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty- five (25) points shall be assigned for reckless disregard.

(d) Gravity. Gravity is the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements. A total of thirty (30) points shall be assigned for gravity. Points shall be assigned as follows:

1. Severity. **Up to** ~~[A total of]~~ twenty (20) points shall be assigned as follows for the severity of any injuries:

a. No serious physical injury occurred, zero points.
b. A serious physical injury occurred, ten (10) points.
c. A fatality occurred, twenty (20) points.

2. Persons at risk of serious physical injury or death. **Up to** ~~[A total of]~~ ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements. Points shall be assigned as follows:

a. No personnel were at risk, zero points.
b. Person(s) were at risk, ten (10) points.

(3) Determination of amount of penalty. The Mine Safety Review commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in Appendix A of this administrative regulation.

(4) Waiver of use of point system to determine civil penalty.

(a) The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the record of the case.

(b) If the commission waives the use of the point system, it shall use the criteria set forth in KRS 351.194(7) to determine the appropriate penalty. When the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation of Reference. (1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPENDIX A

POINTS	AMOUNT
0	$10,000
5	$15,000
10	$20,000
15	$25,000
20	$30,000
25	$35,000
30	$40,000
35	$45,000
40	$50,000
45	$55,000
50	$60,000
55	$65,000
60	$70,000
65	$75,000
70	$80,000
75	$85,000
80	$90,000
85	$95,000
90	$100,000

TERESA J. HILL, Secretary

APPROVED BY AGENCY: October 9, 2006

FILED WITH LRC: October 11, 2006 at 1 p.m.

CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0104, fax (502) 573-0152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holly McCoy

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.

(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for nonintentional violations of mine safety laws, for violations of roof control and mine ventilation plans, and for noncompliance with accident reporting requirements is not currently regulated in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the

Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to the imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(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 to the administrative regulation will add definitions specific to the regulation. The amendment will eliminate the element of intent by owners or part-owners of licensees to violate mine safety laws prior to the imposition of sanctions, including civil penalties. The amendment adds provisions for the imposition of monetary civil penalties against licensees for violations of roof control and mine ventilation plans and for failure to comply with the reporting requirements for accidents in mines.

(b) The necessity of the amendment to this administrative regulations: The 2006 General Assembly amended KRS 351.025(2) to delete the requirement that the owners or part-owners must intentionally violate or order the violation of mine safety laws prior to the imposition of sanctions, including civil monetary penalties, against licensees. KRS 351.070 was amended to allow the imposition of civil monetary penalties for violations of roof control and mine ventilation plans that could lead to imminent danger or serious physical injury KRS 352.180 was amended to authorize the imposition of sanctions, including civil monetary penalties against licensees for violations of the accident reporting requirements in KRS 352.180.

(c) How the amendment conforms to the content of the authorizing statute: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to the imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be subjected to the imposition of sanctions, including civil penalties for violations of mine safety laws that could lead to imminent danger or serious physical injury.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities that comply with mine safety laws will not be subject to any cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger or serious physical injury or death.

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

(a) Initially: The costs associated with introducing a penalty assessment process will be minimal and will be absorbed by the agency The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: 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? Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Holly McCoy

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state and federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. As contained within the enacted SB 200 and HB 572 2006 GA, the amended statutes of KRS 351.025(2), 351.070(13), 351.070(15) and 352.180(4) allow for the promulgation of implementing regulations. Specifically, these regulations would provide the manner and method of assessment of penalties against licensed facilities for violations of safety laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue generated from penalty assessments for violations of mine safety laws is unpredictable. Penalties can only be assessed for violations which place miners in imminent danger. These violations are anticipated to occur infrequently.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unchanged from the first year.

(c) How much will it cost to administer this program for the first year? The costs associated with introducing a penalty assessment process will be absorbed by the agency without additional staff or resources.

(d) How much will it cost to administer this program for subse-

quent years? Unchanged from the first year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amended After Comments)

811 KAR 1:005. Definitions.

RELATES TO: KRS 230.215, 230.260(1) [~~(1), (2)~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3) [~~(1), (2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(2) authorize [~~authorizes~~] the Authority [~~commission~~] to promulgate administrative regulations prescribing the [~~regulate~~] conditions under which horse racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in 811 KAR Chapter 1 [~~the commission's administrative regulations~~].

Section 1. Definitions. (1) "Added money" means the amount of money, exclusive of trophy, added into a stakes by an association, a sponsor, a state-bred program, or other fund, and which is in addition to those monies gathered by nomination, entry, sustaining and other fees paid by the horsemen.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled in January 1 of the year in which the horse was foaled.

(3) "Also eligible" means:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible in the event a finalist is scratched by the judges for a rule violation or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the Authority to investigate, consider, and review any decision or ruling of a judge or official of a meeting to deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of a race.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horseman's bookkeeper, including subscriptions, **driver** [~~jockey~~] fees, forfeitures, and any default incident to these administrative regulations.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authority" means the Kentucky Horse Racing Authority.

(9) "Bleeder" means a horse known to have bled internally or from its nostrils during a workout or race.

(10) "Bleeder list" means a tabulation of all bleeders to be maintained by the Authority.

(11) "Breakage" means the net pool minus payout.

(12) "Breeder" means the owner of the dam of a horse at the time the horse was **conceived** [~~foaled~~].

(13) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with these administrative regulations.

(14) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 1:035.

(15) "Classified race" means a race in which entries are selected by the racing secretary on the basis of ability or past performance.

(16) "Coggins test" means a medical procedure used to determine if a horse is positive for Equine Infectious Anemia.

(17) "Conditioned race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

(a) Age;

(b) Sex;

(c) Earnings;

(d) Number of starts; or

(e) Positions of finishes.

(18) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(19) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes (also see "entry").

(20) "Dash" means a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse shall start in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded shall not exceed the number of starters in the dash.

(21) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight (also known as a calendar day.)

(22) "Dead heat" means a finish of a race in which the noses of two or more horses reach the finish line at the same time.

(23) "Declaration" means the naming of a particular horse as a starter in a particular race.

(24) "Disqualification" means that a:

(a) Person shall not be allowed to start or drive a horse in a race; or

(b) Horse shall not be allowed to start in a race.

(25) "Draw" means the process of assigning post positions and the process of selecting horses in a manner to ensure compliance with the requirements governing racing.

(26) "Driver" means a person who is licensed to drive a horse in a race.

(27) "Early closing race" means a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(28) "Electronic ability" means a computer-generated eligibility certificate that records a horse's racing statistics.

(29) "Elimination heat" means an individual heat of a race in which the contestants must qualify for a final heat.

(30) "Entry" means the act of nominating a horse for a race.

(31) "Exhibition race" means a race on which no pari-mutuel wagering is permitted.

(32) "Extended pari-mutuel meeting" means a meeting or series of meeting, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and in which pari-mutuel wagering is permitted.

(33) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses in a race exceeds the numbering capacity of the totalizer, and the highest numbered horse within the numbering capacity of the totalizer and horses of a higher number are grouped in the mutuel field.

(34) "Forfeit" means money due from a licensee because of error, fault, neglect of duty, breach of contract, or a penalty imposed by the judges or the Authority.

(35) "Handicap" means a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; and

(d) Performance.

(36) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling or gelding) registered for racing.

(38) "In harness" means that that the performance shall be to a sulky.

(39) "Inquiry" means an investigation by the judges of a contest prior to declaring the result of the contest official.

(40) "Late closing race" means a race for a fixed amount of money in which entries close less that six (6) weeks but not more than three (3) days before the race is to be contested.

(41) "Licensee" means an individual, firm, association, partner-

ship, corporation, trustee, or legal representative, licensed to conduct or participate in harness racing under the provisions of the Kentucky Revised Statutes

(42) "Maiden" means a horse that has never won a heat or race at the gait at which it was entered, and for which a purse is offered.

(43) "Maiden race" means a race restricted to maidens.

(44) "Match race" means a race between two (2) or more horses under conditions agreed upon between the contestants.

(45) "Matinee race" means a race in which no entrance fee is charged and in which the payouts, if any, are not money.

(46) "Minus pool" means the amount of money to be distributed on winning wagers exceeds the amount of money comprising the net pool.

(47) "Month" means a calendar month

(48) "Net pool" means the amount of gross ticket sales less refundable wagers and statutory commissions and taxes.

(49) "Nomination" means the naming of a horse to a certain race or series of races, generally accompanied by payment of a prescribed fee.

(50) "Objection" means a verbal claim of foul in a race lodged by the horses driver, trainer, or owner before the race is declared official.

(51) "Official order of finish" means the order of finish of the horses in a contest as declared official by the judges.

(52) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(53) "Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price, and to horses which have started previously for that claiming price or less.

(54) "Overnight race" means a contest for which entries close at a time set by the Authority.

(55) "Pari-mutuel wagering" means a systems of wagering in which those persons who wager on horses that finish in specified positions share the total amount wagered, minus deductions permitted by law.

(56) "Payoff" or "payout" means the amount of money payable to winning wagers.

(57) "Post position" means the preassigned position from which a horse will leave the starting gate

(58) "Post time" means the scheduled starting time for a race.

(59) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, shall exclude that horse or driver from racing.

(60) "Purse" means the total cash awarded as a prize in a race.

(61) "Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

(62) "Scratch time" means the deadline set for withdrawal of entries from a scheduled race.

(63) "Simulcasting' is defined at KRS 230.210(12).

(64) "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

(65) "Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the United States Trotting Association.

(66) "Stake" means a race which will be contested in a year subsequent to its closing in which the money given by the association conducting the race is added to the money contributed by the nominators, all of which except deductions for breeders or nominator's awards belongs to winner or winners, and in which, except as provided in 811 KAR 1:040, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(67) "Starter" means a horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

(68) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(69) "Takeout" means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or administrative regulation

(70) "Totalizator" means the system used for recording, calculating, and disseminating information about ticket sales, wagers odds, and payoff prices to patrons at a pari-mutuel wagering facility.

(71) "Touting" means the act of soliciting anything of value in exchange for information regarding the outcome of a horse race on which wagers are made at a wagering facility under the jurisdiction of the Authority.

(72) "USTA" means the United States Trotting Association.

(73) "Walkover" means a race in which only one (1) horse starts or in which all the starters are owned by the same interest

~~["Added money early closing event" means an event closing in the same year in which it is to be contested in which all entrance and declaration fees received are added to the purse.~~

~~(2) "Appeal" means a request for the commission to investigate, consider, and review any decisions or rulings of judges or officials of a meeting and may deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of races.~~

~~(3) "Claiming race" means a race in which any horse starting therein may be claimed for a designated amount.~~

~~(4) "Classified race" means a race regardless of the eligibility of horses, with entries being selected on the basis of ability or performance.~~

~~(5) "Commission" is defined by KRS 230.210(2).~~

~~(6) "Conditioned race" means an overnight event to which eligibility is determined according to specified qualifications excluding the use of records or time bars and including the following:~~

~~(a) Horses' money winnings in a specified number of previous races or during a specified previous time;~~

~~(b) A horse's finishing position in a specified number of previous races or during a specified period of time;~~

~~(c) Age;~~

~~(d) Sex;~~

~~(e) Number of starts during a specified period of time;~~

~~(f) Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada, or~~

~~(g) Any combination of the qualifications listed above.~~

~~(7) "Dash" means a race decided in a single trial or in a series of two (2) or three (3) governed by one (1) entry fee for the series, in which event a horse shall start in all dashes with positions drawn for each dash and the number of premiums awarded to not exceed the number of starters in the dash.~~

~~(8) "Declaration" means the naming of a particular horse to a particular race as a starter.~~

~~(9) "Disqualification" means that the person is prohibited from acting as an official, from starting or driving a horse in a race, or in the case of a disqualified horse, it shall not be allowed to start.~~

~~(10) "Early closing race" means a race for:~~

~~(a) A definite amount to which entries close at least six (6) weeks preceding the race;~~

~~(b) Which the entrance fee may be on the installment plan; and~~

~~(c) Which all payments are forfeits.~~

~~(11) "Elimination heats" means heats of a race split according to 811 KAR 1:050, Sections 2 and 3, to qualify the contestants for a final heat.~~

~~(12) "Entry" means:~~

~~(a) Two (2) or more horses starting in a race when owned or trained by the same person, or trained in the same stable or by the same management, and~~

~~(b) For purposes of early closing, late closing and stakes races only, is the mandatory coupling of horses as a single wagering interest in a single race when:~~

~~1. Horses in the race are owned wholly or partially by the same owner; or~~

~~2. A trainer of one (1) horse has an ownership interest in another horse in that race.~~

~~(13) "Expulsion" means unconditional exclusion and disqualification from any participation, either directly or indirectly, in the privileges and uses of the course and grounds of a track licensee.~~

~~(14) "Extended pari-mutuel meetings" means a meeting or meetings, at which no agricultural fair is in progress, with an annual total of more than six (6) days duration with pari-mutuel wagering.~~

~~(15) "Futurity" means a stake in which the dam of the compet-~~

~~ing animal is nominated either when in foal or during the year of foaling.~~

~~(16) "Green horse" means a horse that has never trotted or paced in a race or against time, either double or single.~~

~~(17) "Guaranteed stake" means a stake, with a guarantee by the party opening it that the sum shall not be less than the amount named.~~

~~(18) "Handicap" means a race in which:~~

~~(a) A performance, sex or distance allowance is made, and~~

~~(b) Post positions may be:~~

~~1. Assigned by the racing secretary; or~~

~~2. Determined by claiming price.~~

~~(19) "Heat" means a single trial in a race, two (2) in three (3), or three (3) heat plan.~~

~~(20) "In harness" means that the performance shall be to a sulky.~~

~~(21) "Late closing race" means a race for a fixed amount to which entries close less than six (6) weeks and more than three (3) days before the race is to be contested.~~

~~(22) "Licensee" means an individual, firm, association, partnership, corporation, trustee or legal representative, licensed to conduct a harness race meeting under the provisions of the Kentucky Revised Statutes.~~

~~(23) "Maiden" means a stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered, except that races or purse money awarded to a horse after the "official sign" has been posted shall not be considered a winning performance or affect status as a maiden.~~

~~(24) "Match race" means a race which has been arranged and the conditions thereof agreed upon between the contestants.~~

~~(25) "Matinee race" means a race with no entrance fee and where the premiums, if any, are other than money.~~

~~(26) "Overnight event" means a race for which entries close not more than three (3) days, excluding Sundays, or less before the race is to be contested and in the absence of conditions or notice to the contrary, all entries close not later than 12 noon the day preceding the race.~~

~~(27) "Protest" means an objection, properly sworn to, charging that a horse is ineligible to a race, alleging improper entry or declaration or citing any act of an owner, driver or official prohibited by the rules, and which, if true, should exclude the horse or driver from the race.~~

~~(28) "Record" means the fastest time made by a horse in a heat or dash which he won.~~

~~(29) "Stake" means a race which will be contested in a year subsequent to its closing in which the money given by the track conducting the race is added to the money contributed by the nominators, all of which except deductions for the cost of promotion, breeders or nominators awards belongs to the winner or winners and except as provided in 811 KAR 1:040, Section 6, all of the money contributed by the nominators shall be paid to the winner or winners.~~

~~(30) "Standard record" means a record of 2:20 or faster for two (2) year olds and 2:15 or faster for all other ages.~~

~~(31) "Sulky" means a dual wheel racing vehicle:~~

~~(a) With dual shafts that shall be hooked separately on each side, and~~

~~(b) Not exceeding the horse's withers in height.~~

~~(32) "Two (2) in three (3)" means that a horse shall win two (2) heats to be entitled to first money.~~

~~(33) "Walk over" means when only horses in the same interest start and go once over the course and in a "stake race" would then be entitled to all the stake money and forfeits unless otherwise provided in the published conditions.~~

~~(34) "Winner" means:~~

~~(a) The horse whose nose reaches the wire first;~~

~~(b) If there is a dead heat for first, both horses shall be considered winners;~~

~~(c) Where two (2) horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy; or~~

~~(d) Where the dashes or heats are of the same distance and the horses are tied in the summary and the time, both horses shall be considered winners.~~

~~(35) "Wire" means a real or imaginary line from the center of the judge's stand to a point immediately across, and at right angles to the track~~]

TERESA J. HILL, Secretary
WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms that are utilized in the standardbred regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that people reading the standardbred regulations are using the same defined terms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Kentucky Horse Racing Authority "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted..." Additionally, KRS 230.260(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to that statutory directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used throughout the standardbred regulations and; therefore, makes those regulations more understandable and usable.

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

(a) How this amendment will change the existing administrative regulation: This amendment modernizes the standardbred regulations to conforms them to current industry standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the standardbred regulations consistent with current industry standards and common usage of terms in the industry.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted." KRS 230.260(3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Authority to more effectively control horse racing by allowing it to amend other regulations and utilize terms that meet the industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all racing associations, licensees, and persons in any way connected to standardbred racing, including the wagering public.

4) Provide an analysis of how the entities identified in Question (3) will be impacted by either the implementation of this administrative regulation, if new, or by change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: It is not anticipated that the regulated entities identified in Question (3) will have to take any specific ac-

tion to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost to each of the entities identified in Question (3)? It is not anticipated that there will be any cognizable cost to any of the entities identified in Question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3)? All of the entities listed will benefit, since this amendment to the regulation will result in standardbred racing operating more smoothly, efficiently, and in conformity with current standards within the industry.

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

(a) Initially: No increase in cost.

(b) On a continuing basis: No increase in cost.

(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 costs incurred in implementing 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 change if it is an amendment: No increase in funding.

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

(9) TIERING: Is tiering applied. No, tiering does not apply to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amended After Comments)

811 KAR 1:055. Declaration to start; drawing horses.

RELATES TO: KRS 230.215, 230.260(1)[~~, (3)~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)[~~, (6)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the condition under which horse [~~KRS 230.215(2) authorizes the commission to regulate conditions under which harness~~] racing shall be conducted Kentucky. The function of this administrative regulation is to regulate declarations to start and drawing horses.

Section 1. Declaration. (1)[~~(a)~~] Extended pari-mutuel meetings. The declaration time shall be the time posted on the condition sheet [~~9 a.m., unless:~~

~~1. Otherwise specified in the conditions; or~~

~~2. Approved in writing by the commission three (3) days prior to the day of the race.~~

~~(b) If another time is not specified in the conditions, starters shall be declared in at 10 a.m.~~].

(2) A horse shall not [~~be declared to~~] start in more than one (1) race on a racing day.

(3) The time when declarations close shall be the time in use at the meeting.

(4) The association [~~management~~] shall provide a locked box with an aperture through which declarations shall be deposited.

(5) Responsibility for declaration box.

(a) The presiding judge shall be in charge of the declaration box.

(b) The presiding judge shall [~~have the authority to~~] appoint the race secretary to draw races in his or her absence.

(6) Prior to the opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the presiding judge or the race secretary shall:

(a) [~~Check to~~] Ascertain if any declarations by telephone or otherwise [~~mail, telegraph, or otherwise,~~] are in the office and not deposited in the entry box; and

(b) Ensure [~~See~~] that they are declared and drawn in the proper event.

(7) Opening of declaration box.

(a) [~~At the time specified~~] The presiding judge or the race secretary shall unlock the box and sort [~~assort~~] the declarations at the specified time [~~found therein~~].

(b) If the presiding judge or the judge's designee unlocks the box, he or she shall deliver the declarations to the race secretary [~~as soon as the draw is finished~~].

(8) Entry box and drawing of horses at extended pari-mutuel meetings.

(a) The entry box shall be opened by the presiding judge or the judge's designee [~~race secretary~~] at the advertised time.

(b) The presiding judge or the judge's designee [~~race secretary~~] shall ensure that at least one (1) horseman or an official representative of the horseman is present. An owner or agent for a horse with a declaration in the entry box shall not be denied the privilege of being present.

(c) Under the supervision of the presiding judge or the judge's designee [~~race secretary~~], all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn.

(d) If it is necessary to reopen any race, a minimum of two(2) public announcements [~~announcement~~] shall be made [~~at least twice~~] and the box shall be reopened at a definite time.

(9) Drawing of post positions for second heat in races of more than one (1) dash or heat at a pari-mutuel meeting [~~meetings~~]. In races of a duration of more than one (1) dash or heat at a pari-mutuel meeting [~~meetings~~], the judges may draw post positions from the stand for succeeding dashes or heats.

(10) A declaration made and received by [~~Declarations by mail, telegraph, or~~] telephone or otherwise that is [~~actually received and evidence of which is~~] deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others.

(a) The drawings shall be final.

(b) [~~Mail, telephone and telegraph~~] Declarations shall state the:

1. Name and address of the owner or lessee;
2. Name, color, sex, sire and dam of the horse;
3. Name of the driver and his colors;
4. Date and place of last start;
5. Past performance of the horse [~~Current summary~~], including the number of starts, first, seconds, thirds, earnings and best winning time for the current year; and
6. Event or events in which the horse is to be entered.

(11) Effect of failure to declare on time. If an association [a ~~track~~] requires a horse to be declared at a stated time, failure to declare shall be considered a withdrawal from the event.

(12) Withdrawal [~~Drawings~~] of horses after declaration.

(a) After declaration to start has been made, a horse shall not be withdrawn [~~drawn~~] without permission of the judges.

(b) A [~~Any~~] horse eligible to start in a second, third, or fourth heat of a race shall not be withdrawn [~~drawn~~] without the permission of the judges.

(c) A person who withdraws [~~fine, not to exceed $500, or suspension, may be imposed for drawing~~] a horse without permission.

[~~(d) The penalty shall be assessed to both the horse and the party who violates the administrative regulation.~~]

(13) Horses omitted through error.

(a) Except as provided in this subsection, a drawing shall be final.

(b) If there is conclusive evidence that a horse, properly declared[~~other than by telephone~~], was omitted from the race through error of an association [~~a track~~], its agent or employee, the horse may be added to the race and given the outside post position.

(c) For pari-mutuel meetings, the provisions of this subsection shall apply if the error is discovered prior to the publication of the official program.

Section 2. Qualifying Races. At extended pari-mutuel meetings, declarations for overnight events shall be governed by the following:

(1)(a) Within thirty (30) days of being declared in, a horse that has not raced previously at the gait chosen shall:

1. Complete [~~Go~~] a qualifying race in compliance with the conditions set forth by the association under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings; and

2. Acquire at least one (1) charted line by a licensed charter.

(b) Time and beaten lengths shall be determined by a standard photo finish.

(2)(a) The requirements [~~provisions~~] of subsection (1) of this section shall apply to a horse that does not show a charted line for:

1. The previous season; or

2. Within its last six (6) starts.

(b) Uncharted races contested in a heat [~~heats,~~] of more than one (1) dash, and consolidated according to subsection (4) of this section shall be considered one (1) start.

(3)(a) The requirements [~~provisions~~] of subsection (2) of this section shall not apply if a horse:

1. Has raced at a charted meeting during the current season; and

2. Has [~~Gone~~] to meetings at which the races are not charted.

(b) The information from the uncharted races may be:

1. Summarized, including each start; and

2. Consolidated in favor of charted lines.

(4) If the race is less than [~~not at least~~] one (1) mile, the consolidated line shall carry date, place, time, driver, finish, track condition, and distance.

(5)(a) The judges shall require a horse that has been on the judge's [~~steward's~~] list to successfully complete [~~go~~] a qualifying race.

(b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, the horse [~~he~~] may be required to successfully complete [~~go~~] a qualifying race.

(6)(a) Except as provided by paragraph (b) of this subsection, if adequate competition is not available for a qualifying race, the judges may permit a fast horse to qualify by a timed workout that is consistent with the time of the races in which the horse will compete.

(b) A horse shall qualify in a qualifying race if it is on the judge's [~~steward's~~] list for any of the following:

1. Breaks, [~~or~~]

2. Refusing to come to the gate;

3. Poor performance; or

4. Being unmanageable. [~~.~~]

(7) Qualifying races shall be:

(a) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more; and

(b) Scheduled as needed [~~twice a week~~] through the last week of the meeting.

(8)(a) A race to qualify drivers and horses shall be charted, timed, and recorded.

(b) A race to qualify only drivers shall not be required to be charted, timed, and recorded.

(9)(a) Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefaced with the letter "Q".

(b)1. The record shall not be prefaced with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.

2. The presiding judge shall report the test on the judge's sheet.

(10) Before it is permitted to start in a race with pari-mutuel wagering, a horse that fails to race at a charted meeting within thirty (30) days after having started shall:

(a) Start in a charted race, or a qualifying race; and

(b) Meet the standards of the meeting.

(11) A horse shall not enter more than one (1) qualifying race per day.

Section 3. Coupled Entries. (1)(a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled as an "entry" if they are:

1. Owned or trained by the same person; or

2. Trained in the same stable by the same management.

(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the "entry".

(2)(a) If a trainer enters two (2) or more horses, under bona fide separate ownerships or the same ownership, in the events specified in paragraph (b) of this subsection, the horses may race as a separate betting entry [~~entries~~] if:

1. The association has requested they be permitted to race as separate betting entries; and

2. The judges approve the request.

(b) This subsection shall apply to any [~~The events to which the provisions of this subsection apply shall be a~~] stake, early or late closing event, futurity, free-for-all, or other special event.

(c) If more than one (1) horse is [~~The fact that the horses are~~] trained by the same person, that fact shall be stated prominently in the program.

(d) If the race is split in two (2) or more divisions,[~~:~~

~~1.~~] horses in an "entry" shall be seeded insofar as possible, in the following order, by:

1. [~~a.~~] Owners;

2. [~~b.~~] Trainers; and

3. [~~c.~~] Stables.

(e) [~~The~~] Divisions [~~in which they compete~~] and [~~their~~] post positions shall be drawn by lot.

(f) Elimination heats also shall be governed by the provisions of paragraphs (d) and (e) of this subsection.

(3) The presiding judge or the race secretary shall be responsible for coupling horses.

(4)(a) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-mutuel wagering, and[~~.~~]

(b) [~~If this occurs,~~] Entries shall not be rejected on that basis.

(5) If an owner, lessor, or lessee, has a vested interest in another horse in the same race, it shall constitute an entry.

Section 4. Also Eligibles. (1) [~~Not~~] More than two (2) horses shall not [~~may~~] be drawn as also eligibles for a race.

(2) The [~~Their~~] positions of also eligibles shall be drawn along with the starters in the race.

(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:

(a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;

(b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; and

(c) In other races, take the post position drawn by the horse it replaces.

(4) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.

(5)(a) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.

(b) The owner or trainer of [such] a horse moved into the race from the also eligible list shall be notified that the horse is in to go [race].

[(c) The horse shall be posted at the race secretary's office.]

(6) Horses on the also eligible list that are not moved into race by scratch time of the track [9 a.m. on the day of the race] shall be released.

Section 5. Preference. (1)(a) Preference shall be given in [all] overnight events according to a horse's last previous purse race during the current year.

(b) The preference date on a horse that has drawn to race and has been scratched shall be [is] the date of the race from which the horse [he] was scratched.

(2) If a horse is racing for the first time in the current year, the date of the first successful qualifier [declaration] shall be considered the horse's [its] last race date, and preference shall be applied accordingly.

(3)(a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.

(b) If a preference date error has occurred, the race shall be redrawn.

Section 6. Judge's [Steward's] List. (1)(a) A horse shall [may] be placed on a judge's [steward's] list by the presiding judge if it is unfit to race because it [is]

1. Is dangerous;
2. Is unmanageable;
3. Is sick;
4. Is lame; or
5. Is unable to show a performance to qualify for races at the meeting; or
6. Has exhibited repeated breaks.

(b) The owner or trainer shall be notified in writing when a horse is placed on a judge's list [of this action], and the specific item listed in paragraph (a) of this subsection upon which the action is based.

(c) Declaration on a horse placed on a judge's [steward's] list shall be refused.

(d) If a horse is placed on a judge's [steward's] list, the clerk of the course shall make a note on the electronic eligibility [certificate] of the horse stating the:

1. Date it was placed on the judge's [steward's] list;
2. The reason it was placed on the judge's [steward's] list; and
3. If the horse has been removed from the judge's [steward's] list, the date of its removal.

(2)(a) A presiding judge or other official at a nonextended meeting shall not remove from the judge's [steward's] list and accept as an entry a horse that:

1. Has [Had] been placed on a judge's [steward's] list; and
2. [Because he is a dangerous or unmanageable horse,] Has not been removed from the judge's [steward's] list because it is dangerous or unmanageable.

(b) A nonextended meeting may refuse declarations on a horse that has been placed on, but not removed from, a judge's [steward's] list [and not removed therefrom].

(3) A horse scratched from a race because of lameness or sickness shall not race for a period of seven (7) day beginning with the day of the scratch [enter another race for at least three (3) days from the date of the race from which the horse was scratched].

Section 7. Driver. (1) Declarations shall state the name of the horse's driver and also [who shall drive the horse and give] the driver's colors.

(2) A driver shall not be changed after scratch time [9 a.m.] of the track [day preceding the race,] without the permission of the judges and a showing of good cause.

(3) If a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers.

Section 8. (1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting to appoint a committee to consist of the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association to consider [for the election of a horseman and an alternate to represent them on] matters relating to the withdrawal of horses due to bad track or weather conditions.

(2)(a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of the committee formed in subsection (1) of this section [a committee consisting of an agent of the track member, the elected representative of the horsemen and himself].

(b) Upon unanimous decision by the committee that track conditions are safe for racing, unpermitted withdrawals shall not be made.

(3)(a) An entrant may scratch a [his] horse if:

1. A decision by the committee that the track is safe is not unanimous; and
2. The entrant [He] has posted ten (10) percent of the purse to be raced for.

(b) A person who scratches a horse for a reason other than one (1) permitted by these administrative regulations shall be considered to be in violation of this administrative regulation.

(c) If sufficient withdrawals are received to cause the field to be less than six (6), the association [track member] shall have the right to postpone an early closing event or stake and cancel an overnight event.

(4)(a) The money posted pursuant to subsection (4) of this section shall be forwarded to the Authority [commission].

(b) The Authority [commission] shall determine whether a withdrawal was for good cause.

(c) The money shall be:

1. Forfeited [Retained as a fine,] if the Authority [commission] determines that the withdrawal was not for good cause; or
2. Refunded[,] if the Authority [commission] determines that the withdrawal was for good cause.

(5) This section applies [The procedures established by this section govern] only to the withdrawal of horses that have been properly declared in and does not apply [relate] to postponement as set forth [which is covered] in 811 KAR 1:060.

Section 9. Length of Race and Number of Heats. (1) A race or dash shall be listed at a stated distance in units no shorter than one-sixteenth (1/16) of a mile.

(2) The length of the race and the number of heats shall be stated in the conditions.

(3) If a distance or number of heats is not specified, any race shall be a single mile dash except at fairs and meetings of a duration of six (6) days or less where they shall be conducted in two (2) dashes at one (1) mile distances.

Section 10. Two (2) Year Olds. [(1)] A two (2) year old shall not be permitted to:

(1) [(a)] Start in a dash or heat exceeding one (1) mile in distance; or

(2) [(b)] Race in more than two (2) heats or dashes per day.

Section 11. Penalties. (1) A licensed person who violates any provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).

(2) An association that violates any provision of this administrative regulation shall be subject to a fine of up to $5,000 per occurrence, based upon the factual nature and seriousness of the violation.

(3) An unlicensed person who violates any provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR

1:095, Section 4(3). [~~(2) A violation of subsection (1) of this section shall subject the:~~

~~(a) Track to a fine of not less than twenty-five (25) dollars; and~~

~~(b) The owner to the forfeiture of any winnings.~~]

TERESA J. HILL, Secretary
WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. J. Cooksey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the procedures for declarations to start and drawing horses.
(b) The necessity of this administrative regulation: The regulation is necessary establish a consistent and organized procedure for declarations to start and drawing horses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation ensures that horse races are governed by a consistent body of rules concerning postponements.
(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 primarily makes clarifications to the language of the regulation and serves to bring this administrative regulation into conformity with KRS Chapter 13A drafting requirements. It also adds that a horse may be placed on the judge's list (i.e. prohibited from racing) for exhibiting repeated breaks.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the language used in the administrative regulation is precise and clear.
(c) How the amendment conforms to the content of the authorizing statutes: By clarifying the language used in this administrative regulation, the amendment enhances the statutory goal of KRS 230.215(1) of properly regulating the conduct of horse racing in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting or participating in horse races are affected.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No steps for compliance are required; the regulation is merely clarified.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No direct cost increase; some owners will have their horses placed on the judge's list for exhibiting repeated breaks, but this will have limited impact overall
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear rules are established concerning declarations to start and drawing horses.
(5) Provide an estimate of how much it will cost the administrative body 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: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A
(9) TIERING: Is tiering applied? Tiering is not applied, as the regulation applies equally to all persons conducting or participating in horse racing meetings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2) and 230.260(3) grant the Authority power to promulgate administrative regulations governing the conditions under which horse racing is conducted.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No cost.
(d) How much will it cost to administer this program for subsequent years? No cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amended After Comments)

811 KAR 1:090. Medication; testing procedures; prohibited practices [~~Stimulants and drugs~~].

RELATES TO: KRS 230.215, 230.240(2), 230.260(1), 230.265(2), 230.290(2), (3), 230.310, 230.320(1)
STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), (6), 230.320(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3), and 230.320 authorize the Authority to promulgate administrative regulations prescribing the [~~authorizes the commission to regulate~~] conditions under which horse [~~harness~~] racing shall be conducted in Kentucky. KRS 230.240(2) requires [~~authorizes~~] the Authority [~~commission~~] to promulgate administrative regulations restricting or prohibiting the [~~use and~~] administration of drugs or [~~and~~] stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility

relating to the health and fitness of horses. ~~[The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.]~~

Section 1. Definitions. (1) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(2) "Authority laboratory" means a laboratory chosen by the Authority to test saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the Authority veterinarian.

(3) "Location under the jurisdiction of the Authority" or "Association grounds" means a track as defined in KRS 230.210(9).

(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-Inflammatory Drugs: Phenylbutazone and flunixin, if administered in compliance with Section 8 of this administrative regulation.

(5) "Positive finding" means the Authority laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample. For the drugs, medications or substances listed in Section 2(3), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in this administrative regulation. Positive findings also include:

(a) Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

(b) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the Authority veterinarian.

(7) "Split sample laboratory" means the laboratory approved by the Authority to test the split sample portion of the saliva, urine, blood, or other samples or specimens taken from horses under the supervision of the Authority veterinarian.

(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer; or

(c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug or prevent or delay testing procedures.

(3) Therapeutic medications in excess of established threshold concentrations set forth in this administrative regulation shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for phenylbutazone and flunixin are set forth in Section 8 of this administrative regulation.

(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof, prohibited by this section, if:

(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the Authority veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The Authority laboratory presents to the Authority a report of a positive finding. The Authority shall utilize the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule (11/05)" for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation and the administration of an oral dosage of phenylbutazone as set forth in Section 8 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the Authority.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the one (1) adjunct bleeder medication set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the Authority.

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority shall use only **single-use** ~~[one (1) time]~~ disposable needles, and shall dispose of them in a container provided by the Authority.

(5) If a person regulated by the Authority has a medical condition which makes it necessary to **possess** ~~[have]~~ a needle and syringe at a location under the jurisdiction of the Authority, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the Authority, but may establish necessary restrictions and limitations.

(6) An Authority employee may accompany a veterinarian at a location under the jurisdiction of the Authority and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Authority.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): 2.2 grams;

(3) Ranitidine (Zantac®): 8 mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide and Adjunct Bleeder Medication Use on Raceday. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2) Only the Authority veterinarian or a licensed veterinarian approved by the Authority may administer furosemide prior to a race (betting or nonbetting), qualifying race, time trial, or official workout. If the furosemide is administered by a licensed veterinarian other than the Authority veterinarian, the administering veterinarian shall provide a written report to the Authority veterinarian.

(3) The use of furosemide shall be permitted under the follow-

ing circumstances:

(a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the Authority, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b)The syringe employed in the injection shall be provided immediately to the Authority veterinarian, judge or Authority employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered **shall not be less than 100 mg and** shall not exceed 250 mg.

(d) The specific gravity of postrace urine samples shall not be below 1.010. If the specific gravity of the postrace urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plasma, or serum shall be in violation of this administrative regulation.

(f) The cost of administering furosemide shall be determined by the Authority and shall be prominently posted in the racing office.

(g) The cost of administering furosemide shall be borne by the trainer.

(4) One of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid;

(b) Carbazochrome;

(c) Conjugated estrogens; and

(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the Authority veterinarian or a licensed veterinarian approved by the Authority determines that it would be in the horse's best interest to race with furosemide.

(b) Horses eligible for furosemide and entered to start may be monitored by an Authority-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2)(a) A horse determined to be a bleeder by the Authority veterinarian or a licensed veterinarian approved by the Authority shall not be eligible to qualify for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the Authority veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8/06)" and shall be submitted to the Authority approved-representative.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated until the horse has performed in a qualifying race without the use of furosemide.

(3)(a) After a horse has been determined by the Authority veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the Authority veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The authority veterinarian shall complete the form "Declaration to Remove a Horse from the administration of Furosemide KHRA 100-1 (8/06)" if the Authority veterinarian determines that the horse is no longer required to receive furosemide.

(b) If a horse is determined by the Authority veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Phenylbutazone and Flunixin. (1) A single oral or intravenous administration of phenylbutazone shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(2) The phenylbutazone dosage administered shall not exceed:

(a) Two (2) grams (g) oral; or

(b) Two (2) grams (g) intravenous.

(3) A post race sample of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be considered a violation of this section.

(4) The oral administration of phenylbutazone may be performed by the trainer.

(5) Phenylbutazone, injected intravenously, shall be administered by the Authority veterinarian or a licensed veterinarian approved by the Authority.

(6) As an alternative to phenylbutazone, a single intravenous administration of flunixin shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(7) The flunixin dosage administered shall not exceed 500 mg.

(8) A post race sample of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(9) Flunixin, injected intravenously, shall be administered by the Authority veterinarian or a licensed veterinarian approved by the Authority.

(10) Nonsteroidal anti-inflammatory drugs other than phenylbutazone or flunixin shall be prohibited.

(11) A horse that has been administered phenylbutazone or flunixin may be subject to a saliva, urine, blood, or other sample or specimen taken under the supervision of the Authority veterinarian to determine the quantitative phenylbutazone or flunixin level present in the horse or the presence of other drugs in the horse.

(12) In a horse in which phenylbutazone has been administered according to Section 8(1), flunixin is prohibited. In a horse in which flunixin has been administered according to Section 8(6) of this administrative regulation, phenylbutazone is prohibited.

Section 9. Test Area. (1) A licensed association shall provide and maintain on association grounds a test area.

(2) The test area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace and postrace testing.

(3) The test area shall be under the supervision and control of the Authority veterinarian.

Section 10. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the Authority veterinarian. The Authority veterinarian shall take a sample from a horse that finishes first in a race and a horse or horses designated by the judges to determine if there has been a violation of this administrative regulation.

(2) The Authority veterinarian shall determine a minimum sample requirement for the Authority laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the Authority laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the Authority laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the Authority veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section,

including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the Authority veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the Authority veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission of, and in the presence of, the Authority veterinarian.

(6) Within five (5) business days of receipt of notification by the Authority laboratory of a positive finding, the Authority shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the Authority to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

Section 11. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the Authority laboratory, addressed in Section 10 of this administrative regulation, until the split samples are packed and secured for shipment to the Authority laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the Authority.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the Authority veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed and verification that the lock was secured prior to and after opening of the freezer. An Authority veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or of **samples** [ples] that are not in a frozen condition during storage shall be documented in the log. The Authority shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse may request that a split sample corresponding to the portion of the specimen tested by the Authority laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the Authority to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer and owner of the horse receives oral or written notice of the positive findings of the Authority laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the Authority veterinarian in connection with securing, maintaining and shipping the split sample result shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the Authority shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the **split sample** laboratory has agreed to send results to both the person requesting the testing and the Authority; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The Authority shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the Authority.

Section 12. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the Authority shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form." The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an Authority employee after notice to the owner, trainer or their designee, and an Authority designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the Authority. A form shall be signed by both the owner's representative, if present, and the Authority representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The split sample chain of custody verification form shall be completed and signed by the representative of the Authority and the owner, trainer or designee, if present.

(5) The Authority representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if requested.

Section 13. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) Medications shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 14. Trainer Responsibility. (1) A trainer shall be responsible for the condition of horses in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the Authority to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and

safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the Authority veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the names of mares that have been bred and are entered to race;

(g) Promptly notifying the Authority veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse, in his or her care, at a location under the jurisdiction of the Authority to the judges and the Authority veterinarian and ensuring compliance with Section 21 of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the judges and the Authority veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour before post time or at a time otherwise prescribed before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the judges; and

(o) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 15. Licensed Veterinarians. (1) A veterinarian licensed by the Authority and practicing at a location under the jurisdiction of the Authority shall be considered under the supervision of the Authority veterinarian and the judges. A veterinarian shall report to the judges or the Authority veterinarian a violation of this administrative regulation by a licensee.

Section 16. Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the Authority shall submit a KHRA-2 form, "Veterinarian Report of Horses Treated to be Submitted Daily", to the Authority veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent information requested by the Authority veterinarian.

(2) The KHRA-2 form shall be signed by the treating veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the Authority veterinarian.

(4) The KHRA-2 form shall be confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the Authority, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of the KHRA-2 form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the Authority laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation shall report this fact immediately to the Authority veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. Such records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount and type of medication administered;

(d) The drug or compound administered;

(5) The method of administration; and

(6) The diagnosis.

The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by Authority personnel.

Section 17. Veterinarian's List. (1) The Authority veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the Authority veterinarian, the horse is capable of competing in a race.

(3) The Authority veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the Authority veterinarian or a licensed veterinarian approved by the Authority.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365 day period - thirty (30) days;

(c) Third incident within a 365 day period - 180 days;

(d) Fourth incident within a 365 day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the Authority veterinarian, who shall certify in writing to the judges the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the Authority veterinarian.

Section 18. Distribution of Purses, Barn Searches and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the Authority laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance or metabolic derivative in the saliva, urine, blood, body fluids or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the Executive Director of the Authority or the judges shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the Authority detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the Authority laboratory and

split sample laboratory, the remaining portion of the samples at the Authority laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the Authority. If a report indicating a positive finding has been issued, the Authority shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The Authority may freeze samples.

Section 19. Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the Authority:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver.

(2) Without the prior permission of the Authority or its designee, the possession or use of a drug, medication or substance that has never been approved by the U. S. Food and Drug Administration (FDA) for use in humans or animals at a location under the jurisdiction of the Authority. The Authority shall determine whether to grant prior permission after consultation with the Equine Research Drug Council.

(3) The possession or use of the following blood doping agents at a location under the jurisdiction of the Authority:

a. Erythropoietin;

b. **Darbepoetin** [~~Darbepoietin~~];

c. Oxyglobin®;

d. Hemopure®; or

5. Any substance that abnormally enhances the oxygenation of body tissue.

(4) The practice, administration or application of a treatment, procedure or therapy which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a driver.

(5) The use of extracorporeal shock wave therapy or radial pulse wave therapy unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the Authority shall administer the treatment;

(c) The Authority veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the Authority veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy."

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse within twenty-four (24) hours of a race in which the horse is entered.

(7) Without the prior permission of the Authority veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the time of a race in which the horse is entered.

(8) A serum total carbon dioxide (TCO2) level that exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation.

(9) Possession or use of a blood gas machine by a person other than an authorized representative of the Authority at a location under the jurisdiction of the Authority; and

(10) Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the Authority at a location under the jurisdiction of the Authority.

Section 20. TCO2 Testing and Procedures. (1)(a) The presiding judge may order the prerace or postrace collection of blood samples from, and prerace or post race testing of, a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as directed by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace and postrace testing shall be done at a reasonable time, place, and manner as directed by the presiding judge.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the Authority laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the Executive Director of the Authority shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split Sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the samples by the Authority veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place and manner directed by the Authority veterinarian.

(f)The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be re-tested periodically by the Authority veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an Authority representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the Authority veterinarian, the horse's usual feed ration and supplements.

(f) If the Authority veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges shall permit the horse to race. In such case, the judges may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 21. Postmortem Examination. (1) The Authority veterinarian may require a postmortem examination by a qualified designee of the Authority of a horse that dies or is destroyed at a location under the jurisdiction of the Authority.

(2) The Authority or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.

(3) The Authority veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The Authority veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The Authority shall bear the cost of a necropsy that is required by the Authority.

(4) The presence of a prohibited drug, medication, substance or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation. [~~(1) At every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of:~~

~~(a) Medication;~~

~~(b) Stimulant;~~

~~(c) Sedative;~~

~~(d) Depressant;~~

~~(e) Local anesthetic, or~~

~~(f) Any foreign substance except as provided by Sections 14 and 15 of this administrative regulation.~~

~~(2) The tests shall be conducted on the winning horse in every heat and race.~~

~~(3) The judges may order a horse in a race to be subjected to a urine test, or blood test, or both.~~

~~(4) Testing shall be performed by a laboratory designated by the commission.~~

~~(5)(a) A positive test during a time trial shall be treated as a violation.~~

~~(b) The winning time shall be disallowed, and the trainer of record shall be:~~

~~1. Fined; or~~

~~2. Suspended, or~~

~~3. Fined and suspended.~~

~~Section 2. (1)(a) When a blood or urine sample is taken by a veterinarian, the owner, trainer or authorized agent shall be present.~~

~~(b) A sample shall be:~~

~~1. Placed in two (2) containers and designated as the "primary" and "secondary" samples.~~

~~2. Immediately sealed, with tamper proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only.~~

~~(c) After both portions of the samples have been identified as provided in paragraph (b)1 of this subsection, the "primary sample" shall be delivered to the commission chemist's laboratory.~~

~~(d) The "secondary sample" shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature as the primary sample.~~

~~(2)(a) If a positive report has been received, an owner or trainer may request the commission to have the other portion of the split sample sent to a referee lab for analysis, the cost of which shall be paid by the owner or trainer.~~

~~(b) A list of approved referee labs shall be provided by the commission veterinarian or the presiding judge.~~

~~(c) The cost of the shipping shall be paid by the Kentucky Racing Commission.~~

~~Section 3. (1) If there is a positive test finding the presence of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of this administrative regulation in the postrace test, the laboratory shall immediately notify the presiding judge or commission veterinarian, who shall notify the presiding judge.~~

~~(2) If a positive report is received from the laboratory by the presiding judge:~~

~~(a) The person held responsible shall be notified, and~~

~~(b) A thorough investigation shall be conducted by or on behalf of the judges.~~

~~(3)(a) A time shall be set by the judges for a hearing to dispose of the matter.~~

~~(b) The hearing shall be continued if the judges determine that circumstances justify a continuance.~~

~~(4) If the chemical analysis of blood, urine, or other sample of the postrace test taken from a horse indicates the presence of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of this administrative regulation, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.~~

~~Section 4. (1) A horse participating in a race or entered in a race shall not carry in its body any substance as established in Section 1(1) of this administrative regulation, except as provided by Sections 14 and 15 of this administrative regulation.~~

~~(2) A substance established in Section 1(1) of this administrative regulation shall not be administered within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided by Section 14 of this administrative regulation to a horse entered to race by:~~

~~(a) Injection;~~

~~(b) Intravenous administration;~~

~~(c) Dose syringe;~~

~~(d) Oral administration;~~

~~(e) Nasal gastric tube;~~

~~(f) Rectal infusion or suppository;~~

~~(g) Inhalation; or~~

~~(h) Any other means.~~

~~(3) The prohibitions in this section include injection or intravenous administration of vitamins, electrolyte solutions, and amino acid solutions.~~

~~(4) A person who administers, influences, or conspires with another person to administer to a horse a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of this administrative regulation within twenty-four (24) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 of this administrative regulation.~~

~~Section 5. If the postrace test or tests prescribed in Section 1 of this administrative regulation disclose the presence in a horse of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of this administrative regulation, in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse.~~

~~Section 6. A horse shall not be tubbed in ice in the paddock prior to its racing commitment.~~

~~Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.~~

~~(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by Sections 14 and 15 of this administrative regulation.~~

~~(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance.~~

~~Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:~~

~~(a) Required by the provisions of this administrative regulation; or~~

~~(b) Ordered by the judges.~~

~~(2) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse who refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 16 of this administrative regulation.~~

~~Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.~~

~~(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:~~

~~(a) Forfeited; and~~

~~(b) Paid over to the track where the infraction occurred for redistribution among the remaining horses in the race entitled to them.~~

(3) A forfeiture and redistribution of winnings shall not effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 10. Blood Gas Testing. (1) Testing procedure.

(a) Advance announcement of program testing by blood gas analyzer shall not be made.

(b) Announcement for selected races or selected horses shall be made by the judges at the appropriate time and location.

(c) The judges shall make the necessary selections of test subjects at its discretion.

(d) Each horse entered to compete in a race shall be made available upon entering the paddock for the purpose of having a blood sample drawn by the commission veterinarian or blood gas technician.

(e) Failure to report within the prescribed time or refusal by a horseman to present a selected horse under his care, custody or control for the blood gas analyzer testing shall result in an automatic scratch of the horse from the racing program, and shall be subject to the penalties provided in Section 16 of this administrative regulation.

(f)1. After a horse that is in the paddock has had the first blood drawn for the total carbon dioxide test (TC02), the horse shall not be allowed to leave the paddock for any reason unless permitted by the presiding judge.

2. Removing a horse from the paddock after the first blood has been drawn for the total carbon dioxide test (TC02) without permission of the presiding judge shall result in an automatic scratch of the horse from the racing program and the trainer shall be subject to the penalties provided in Section 16 of this administrative regulation.

(g) The commission veterinarian or blood gas technician shall document the name of the trainer or party who failed to report for testing or refused to have blood drawn from the horse, and shall file a report with the judges.

(2) Test documentation.

(a) The commission veterinarian or blood gas technician shall be responsible for documenting every aspect of the blood gas analyzer test procedure.

(b) The blood gas analyzer shall be calibrated by the commission veterinarian or blood gas technician prior to the program testing.

(c) The blood gas analyzer shall be properly maintained and secured during any absence of the commission veterinarian or blood gas technician.

(d) At the conclusion of testing the commission veterinarian or blood gas technician shall secure documentation of testing at the commission field office.

(3) Sample handling.

(a) The blood samples shall be tested by the commission veterinarian or blood gas technician and the results of that test shall be recorded by the commission veterinarian or blood gas technician.

(b) If the testing of a horse shows the total carbon dioxide (TC02) level at thirty-seven (37) millimoles per liter or higher for nonlasix horses and a total carbon dioxide (TC02) of thirty-nine (39) millimoles per liter or higher for lasix horses:

1. The trainer or licensed designee and the presiding judge shall be notified immediately by the commission veterinarian or blood gas technician and the horse in question shall be expeditiously retested by the same procedure;

2. The blood gas analyzer testing shall be observed by the trainer of the horse or his designee, and if possible the commission veterinarian; and

3. A second excessive level of total carbon dioxide (TC02), as defined by this paragraph shall be deemed a positive test and the judges shall be immediately notified and the horse scratched.

(c) The commission veterinarian or blood gas technician shall properly identify horse and label each blood tube accordingly prior to taking any blood samples for the blood gas analyzer test.

(4) Sanctions.

(a) The trainer or responsible party shall receive a warning for the first violation of this section.

(b) A ruling shall not be issued for the first violation of this section.

(c) For all subsequent violations, the trainer of the horse shall be subject to the penalties provided in Section 16 of the administrative regulation.

Section 11. Hypodermic Syringe Prohibited. (1) Except for a licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance:

(a) Within the grounds of a licensed harness race track, or

(b) In or upon the premises which he occupies, or has a right to occupy, or

(c) In his or her personal property or effects.

(2) A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:

(a) Keep a log of his or her activities on "Veterinary Report Of Horses Treated"; and

(b) Submit a copy of "Veterinary Report Of Horses Treated" to the commission veterinarian office of the track each day of a race meeting.

(2) The log shall include the:

(a) Name of horse;

(b) Name of trainer;

(c) Nature of ailment;

(d) Type of treatment; and

(e) Date and hour of treatment.

(3) The veterinarian shall report to the presiding judge or the commission veterinarian any internal medication given by the veterinarian by injection or orally to a horse after he has been declared to start in any race.

Section 13. (1) A veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall:

(a) Use only one (1) time disposable type needles, and

(b) Not reuse a disposable needle.

(2) The disposable needles shall be kept in his possession until disposed of by him off the track.

(3) A veterinarian, assistant veterinarian or his employee shall not leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 14. (1) Approval and prescription of lasix for racing shall be made:

(a) By the commission veterinarian, or a licensed veterinarian approved by the commission; and

(b) If the:

1. Commission or licensed veterinarian has seen the horse bleed from the nostrils, or

2. Horse has been scoped and declared a bleeder by the commission veterinarian or a licensed veterinarian.

(2) If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting.

(3) Only the commission veterinarian or a licensed veterinarian approved by the commission, may administer lasix prior to a race, including nonbetting, pari-mutuel races, and time trials. Lasix administered by a licensed veterinarian shall be turned into the commission veterinarian.

(4) The use of oral lasix shall be forbidden.

(5) The judges shall keep a record of horses using lasix for the first time.

(6) A lasix administration time schedule shall be posted.

(7) No more than 250 milligrams four (4) hours prior to a race shall be administered.

(8) A fee of ten (10) dollars shall be paid to the commission

~~designee for when lasix is administered to a horse.~~

~~(9) If a trainer no longer wishes to use lasix:~~

~~(a) A "Termination of Lasix" shall be submitted to the judges office at the track; and~~

~~(b) Before being allowed to race without lasix, a horse shall:~~

~~1. Perform in a qualifying race without the use of lasix; and~~

~~2. Meet the standards of the meeting; and~~

~~(c) A horse shall qualify and meet the standards of the meeting prior to being permitted to use lasix again.~~

~~(10)(a) Testing shall be quantitative, and a urine test with a specific gravity of less than 1.010 along with a blood level of 100 nanograms or greater shall subject the person who has control, care, and custody of the horse to the penalties provided in Section 16 of this administrative regulation.~~

~~(b) A mutual decision to take random samples shall be made by the commission veterinarian and the judges.~~

~~(11) Horses that bleed while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.~~

~~(a) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.~~

~~(b) The opinion of the third veterinarian shall be delivered to the presiding judge and the commission veterinarian who shall make a final decision on the issue.~~

~~Section 15. Phenylbutazone. (1) The oral or intravenous administration of phenylbutazone shall not be permitted within twenty-four (24) hours of post time of the first race.~~

~~(2) The phenylbutazone dosage administered shall not exceed:~~

~~(a) Two (2) grams (g) oral; or~~

~~(b) Two (2) grams (g) intravenous.~~

~~(3) A post-race sample reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be subject to the penalties provided in Section 16 of this administrative regulation.~~

~~(4) The oral administration of phenylbutazone may be performed by the trainer.~~

~~(5) Phenylbutazone, injected intravenously, shall be administered by the commission veterinarian or a licensed veterinarian approved by the commission.~~

~~Section 16. The penalty for violation of the provisions of this administrative regulation shall be:~~

~~(1) A fine not to exceed $10,000;~~

~~(2) Suspension not to exceed one (1) year;~~

~~(3) A fine not to exceed $10,000, and a suspension not to exceed one (1) year; or~~

~~(4) Expulsion.~~]

Section 22. [~~17.~~] Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", (11/05); and

(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", (8/06); and

(c) "Veterinary Report Of Horses Treated, KHRA 100-2", (8/06); and

(d) "Split Sample Shipment Form 2000, KHRA 100-3", (8/06); and

(e) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy, KHRA 100-4", (8/06); and

(f) "Certificate Termination of Lasix KHRA 100-5", (8/06); and

(g) "The Kentucky Horse Racing Authority Withdrawal Guidelines".

[~~"Termination of Lasix, KRC-1(8/97)"; and~~

~~(b) "Veterinary Report Of Horses Treated, KRC-2(8/97)".~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Authority [~~Commission~~], 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4.30 p.m.

(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

TERESA J. HILL, Secretary
WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner

APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.

CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1442.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is designed to govern the administration of drugs and medications in standardbred horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give the Kentucky Horse Racing Authority ("KHRA" or "Authority") the tools to effectively regulate harness racing. In order to maintain the integrity of horse racing and protect the physical well-being of jockeys, it is necessary that the racing industry have strong and enforceable rules, coupled with sanctions, governing what drugs, medications or other substances can be in the body of a horse at the time it goes to the starting gate to compete in a race.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.240(2) specifically authorized the KHRA to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." KRS 230.215(2) vests in the Kentucky Horse Racing Authority "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted..." Additionally, KRS 230.260(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting." This administrative regulation conforms to the contents of the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment to 811 KAR 1.090 will provide an effective, comprehensive, and far-reaching rule regarding the administration of drugs and medications to standardbred horses and will; therefore, directly assist in the administration of statutes in Kentucky. This amendment is comprehensive and far-reaching and is the result of extensive and wide-ranging research on the part of the Kentucky Equine Drug Research Council and national organizations dedicated to putting together the best possible rule regarding race day medications. Nothing is more critical to the integrity or safety of racing than the perception and reality that horses are running free of the influence of illegal drugs or medications.

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

(a) How this amendment will change the existing administrative regulation: This amendment largely revamps the current regulation regarding drugs and medications and mirrors in most respects the newly promulgated thoroughbred rule regarding drugs and medications. Under this amendment to this regulation, the only injectable allowed within 24 hours of post time is furosemide (not less than 4 hours prior to post time) and 1 approved adjunct bleeder medication. A single oral or intravenous administration of phenylbutazone or an intravaneous administration of flunixin shall be permissible, but must be administered more than 24 hours prior to post time. The regulation specifies certain prohibited practices such as the possession or use of blood doping agents, the possession or use of a shock wave therapy machine and the possession or use of a blood gas machine. Finally, the amendment addresses testing procedures and the responsibility of trainers and veterinarians to ensure that prohibited

drugs and medications are not administered to horses.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the standardbred regulations into conformance with evolving industry standards. This amendment to the regulation will place Kentucky at the forefront of standardbred racing in this country in terms of regulating drugs, medications, and other substances in standardbred horses.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment enables the Authority to carry out its statutory directive to "prescribe necessary and reasonable... regulations... under which horse racing... shall be conducted." KRS 230.260(3). Additionally, KRS 230.240(2) specifically authorizes the Authority to "promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to participating in a race."

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an effective, comprehensive and far-reaching rule regarding the administration of drugs and medications to standardbred horses and will; therefore, assist in the effective administration of the statutes in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all aspects of the standardbred racing industry. Owners, trainers, drivers, exercise personnel, the betting public, and others who work in and around harness race tracks and other licensed facilities in Kentucky will be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Owners—No additional action will need to be taken. Trainers- Will continue to be responsible for their horses, just as they were in the past. They will need to make sure they understand the regulation and operate in compliance with the regulation. Drivers—No additional action will need to be taken. Exercise personnel—No additional action will need to be taken. Betting Public—no additional action will need to be taken. People who work in and around the harness track—Veterinarians will need to become familiar with the regulation. Licensed Facilities—No additional action will need to be taken. Kentucky Horse Racing Authority—Veterinarians have already been testing horses for drugs. They will continue testing. Security has already been monitoring the track for illegal activities. Such surveillance will continue.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Owners—May incur additional costs for testing if split samples are taken. Trainers—May incur additional costs for testing if split samples are taken. This cost will probably be passed on to the owner. Drivers- Will not incur additional costs Exercise Personnel—Will not incur additional costs Betting Public- Will not incur additional costs People who work in and around the harness track—Will not incur additional costs Licensed Facilities—May incur additional costs as a result of increased testing for medications and increased security. See below. Kentucky Horse Racing authority—May need to hire additional personnel to administer the regulation. There may need to be additional veterinarian staff, detention barn workers and additional security personnel. These costs will be born by the licensed facilities pursuant to KRS 230.240.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners—Owners will have more confidence in the system and racing will be conducted on more level playing field. Trainers—Trainers will be competing on a more level playing field. Drivers—Drivers will be competing on a more level playing field and will be safer on the track. Exercise Personnel—Exercise personnel will be safer. Betting Public—Will have more confidence in the industry. The playing field should be leveled for the betting public. Licensed Facilities—The integrity of the industry will be improved. If the handle increases because the betting public has more confidence in the honesty of the racing, this will inure to the bottom line of the licensed facilities. An increased handle may also result in increased purses. Kentucky Horse Racing Authority—The integrity of the industry will be improved. An increased handle will result in an increase in tax revenue to the Commonwealth and increased contributions to certain funds administered by the KHRA.

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

(a) Initially: A similar regulation has already been implemented in the thoroughbred side of racing. There should not be any increased cost for the initial implementation.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost in enforcing and implementing this regulation initially. The veterinarians, security personnel, stewards and KHRA were already enforcing the prior regulation and are enforcing a similar regulation in the thoroughbred industry. It is possible additional personnel may be needed. The licensed associations are responsible for paying these costs pursuant to KRS 230.240. See 4(b) above.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change if it is an amendment:
Additional costs may be incurred because the veterinarians will have more duties, there may be more testing and there may be an increase in security as a result of the regulation. The associations are required pursuant to KRS 230.240 to pay for the reasonable compensation of veterinarians, security officers and inspectors.

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

(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: 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 Administration and Financial Management
(Amended After Comments)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158,

1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a, Pub L. 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa

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 technical eligibility requirements of the Medicaid program.

Section 1. Definitions. (1) **"Cabinet" means the Cabinet for Health and Family Services.**

(2) "Child" means a person who:

(a)1.a. Is under the age of eighteen (18); or

b. Is under age nineteen (19) if the person is:

(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and

(ii) Expected to complete the program before age nineteen (19),

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(3) [~~(2)~~] "Evidence of identity" means:

(a) A current state driver's license or state identity document bearing the individual's picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or

(c) For children who are age sixteen (16) or younger:

1. A school identification card with a photograph;

2. A military dependent's identification card, if it contains a photograph;

3. A school record that shows the:

a. Date and place of birth; and

b. Parent or parents' name;

4. A clinic, doctor, or hospital record showing date of birth;

5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) [~~(3)~~] "Kentucky Transitional Assistance Program" or "(K-TAP)" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(5) [~~(4)~~] [~~(3)~~] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(6) [~~(5)~~] "Satisfactory documentary evidence of citizenship or nationality":

(a) A United States passport;

(b) A Certificate of Naturalization (DHS Form N-550 or N-570);

(c) A Certificate of United States Citizenship (DHS Form N-560 or N-561);

(d) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs (a) through (c) of this subsection is not available or cannot be obtained:

1. A United States birth certificate;

2. A Certification of Birth issued by the Department of State (Form DS-1350);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545);

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872);

7. A final adoption decree;

8. Evidence of civil service employment by the United States government before June 1976;

9. An official military record of service showing a United States place of birth; or

(e) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

a. Was established at the time of a person's birth;

b. Was created at least five (5) years before the initial application date; and

c. Indicates a United States place of birth; or

2. A life, health, or other insurance record that:

a. Shows a United States place of birth; and

b. Was created at least five (5) years before the initial application date; or

(f) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (e) of this subsection is not available or cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:

1. Federal or state census record showing:

a. United States citizenship; or

b. A United States place of birth;

2. Institutional admission papers that:

a. Are from a nursing facility, skilled nursing facility, or other institution;

b. Were created at least five (5) years before the initial application date; and

c. Indicate a United States place of birth;

3. Medical record that:

a. Was created at least five (5) years before the initial application date; and

b. Indicates a United States place of birth unless the application is for a child under age five (5); or

4. Written affidavit by at least two (2) individuals:

a. Of whom one (1) is not related to the applicant;

b. Who have personal knowledge of the event establishing the applicant's claim of citizenship, and

c. Provide proof of their own citizenship and identity.

(7) [~~(6)~~] [~~(4)~~] "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(8) [~~(7)~~] [~~(5)~~] "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(a) A child in a foster family care or private nonprofit child-caring institution dependent in whole or in part on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(c) A pregnant woman;

(d) A child of unemployed parents;

(e) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(f) A child (but not his parents) who:

1. Would have been financially eligible for Aid to Families with

Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

2. Meets the definition of Section 1(1) of this administrative regulation;

(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(h) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child's insurance benefits based on disability as specified in 42 U S.C. 1383c;

(i) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI or SSP except for these benefits; and

3. Is not entitled to hospital insurance benefits under the Medicare program;

(j) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(k) A child who:

1. Was receiving supplemental security income on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive supplemental security income, or

(l) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of needy persons listed in this subsection shall be included in the program as categorically-needy and thus eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to twelve (12) months of extended Medicaid.

(c) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

1. The child:

a. Has not reached his first birthday; and

b. Resides in the household of the woman; and

2. The woman remains, or would remain if pregnant, eligible for the assistance.

(d)1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an institutionalized individual in an intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) or supports for community living (SCL) for an individual with mental retardation or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

(e) A woman during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640.

(f) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, Section 2(2)(c).

(h) If federal Medicaid-matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Section 2(2)(f).

Section 3. The Medically Needy. (1) An individual including a child pursuant to Section 2(2)(f) of this administrative regulation or a pregnant woman who has sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640 through 907 KAR 1:665 if he meets:

(a) The income and resource standards of the medically needy program established in 907 KAR 1:640 and 907 KAR 1:645; and

(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.

(2) The medically needy eligible groups shall include:

(a) A pregnant woman during the course of her pregnancy; and

(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficianes, Qualified Disabled Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S C. 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. For the month in which the determination was made.

(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006.

(3) A specified low-income Medicare beneficiary as defined in 42 U.S C. 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation

institution shall meet the definition in Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a)1. Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

a. The work is intermittent; and

b. The excess is of a temporary nature as evidenced by the fact that the individual:

(i) Was under the 100 hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

2. Within twelve (12) months prior to application, a parent received unemployment compensation; or

3. A parent is receiving or has been found ineligible for unemployment compensation; and

(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(3)(ii);

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified;

(5) An aged individual shall be at least sixty-five (65) years of age;

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI;

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;

d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, have a caretaker relative who shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;
2. Grandmother;
3. Brother;
4. Sister;
5. Uncle;
6. Aunt;
7. Nephew;
8. Niece;
9. First cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes;

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The cabinet:

(i) Shall exempt an applicant or recipient who receives Medicare or SSI from providing further documentation of citizenship or nationality;

(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and

(iii) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state governmental, public assistance,

law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

(ix) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(x) On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unremarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158;

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522,

(v) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unremarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(viii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

(ix) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. ~~[The alien shall be qualified as a categorically needy recipient,~~

2.] The alien shall meet the income, resource and categorical requirements of the Medicaid Program;

2. [3.] The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. [4.] Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. [5.] The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed; and

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday; or

(c) Sixty-five (65) years of age or over; or

(4) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall.

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the

court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3 Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional, and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent child shall be eligible for Medicaid if financial eligibility requirements are met.

GLENN JENNINGS, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical eligibility requirements of the Medicaid Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in the authorizing statutes by establishing the technical eligibility requirements of the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the technical eligibility requirements of the Medicaid 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: Section 6036 of the Deficit Reduction Act of 2005 (DRA), Improved Enforcement of Documentation Requirements, created a new subsection 1903(x) of the Social Security Act that requires individuals claiming U.S. citizenship to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid on or after July 1, 2006. Therefore, this amendment assures compliance with the DRA by requiring individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement Section 6036 of the DRA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of Pub.L. 109-171, DRA, Section 6036, which requires individuals (effective July 1, 2006) to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.

(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 requiring individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all applicants for Medicaid benefits and current recipients who are now subject to the new federal rule that requires individuals to present satisfactory documentary evidence of citizenship or nationality in order to receive Medicaid.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require all individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Applicants and current recipients could experience costs associated with compliance such as cost to procure a birth certificate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Requiring applicants and current recipients to provide satisfactory documentary evidence of citizenship or nationality is a federal rule by which Kentucky Medicaid must comply in order to continue receiving Federal Financial Participation (FFP) for Medicaid expenditures.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates initial additional expenditures of approximately $300,000 ($150,000 state funds, $150,000 federal funds) resulting from systems modifications and member notifications of the new policies.

(b) On a continuing basis: DMS anticipates ongoing additional expenditures of approximately $250,000 ($125,000 state funds; $125,000 federal funds) per year for additional staff time related to document verification during member initial enrollment and re-enrollment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding 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 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: Neither 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: 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all applicants for Medicaid benefits and current recipients who are now subject to the new federal rule that requires individuals to present satisfactory documentary evidence of citizenship or nationality in order to receive Medicaid.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Section 6036 of the Deficit Reduction Act of 2005 (Pub.L. 109-171).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:012. Inpatient hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.050, 42 C.F.R. 440.10, 42 U.S.C. 1396, a, b, d, r-4[~~, 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 has responsibility to administer the Medicaid Program. KRS 205.520 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 inpatient hospital services for which payment shall be made by the Medicaid Program for a hospital inpatient service

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

(2) "Emergency" means a condition or situation which requires an emergency service pursuant to 42 C.F.R. 447.53.

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

(4) "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

Section 2. Prior Authorization. [~~(1)~~] To be covered by the department:

(1)[.] A nonemergency admission, **including an elective admission or a weekend admission among other nonemergency admissions**, prior to the admission, shall be determined by the department to be:

(a) Medically necessary; and

(b) [~~Effective August 1, 2006,~~] Clinically appropriate pursuant to the criteria established in 907 KAR 3:130; **and.**

(2) An emergency admission, within seventy-two (72) hours of the admission, shall be determined by the department to be:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130. [~~The requirements established in subsection (1) of this section shall not apply to an emergency admission~~]. [~~Definition. "Medical necessity" or "medically necessary" means that a covered benefit shall be:~~

~~(1) Provided in accordance with 42 C.F.R. 440.230;~~

~~(2) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;~~

~~(3) Clinically appropriate in terms of amount, scope and duration based on generally accepted standards of good medical practice;~~

~~(4) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;~~

~~(5) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;~~

~~(6) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and~~

~~(7) If applicable, provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441.~~

~~Section 2. Prior Authorization. A Nonemergency admission shall have prior approval of medical necessity by the designated peer review organization in order for the admission to be covered under the Medicaid Program. This requirement shall not apply to emergency admissions. Weekend stays associated with a Friday or Saturday admission for an elective surgical or diagnostic procedure shall not be reimbursed unless an emergency exists.]~~

Section 3. Covered Admissions. (1) An admission [~~Admissions~~] primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis shall be covered.

(2) An admission [~~Admissions~~] relating to only observation or diagnostic purposes shall not be covered.

(3) Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

~~[(4) Unless an emergency exists, a weekend stay associated with a Friday or Saturday admission for an elective surgical or diagnostic procedure shall not be covered by the department.~~

~~(5) In accordance with 907 KAR 1:013, an admission for less than twenty-four (24) hours shall not be approved or reimbursed.]~~

Section 4. Noncovered Services. Inpatient hospital services not covered shall include:

(1) A service which is not medically necessary including [~~to the patient's well-being, such as~~] television, telephone, or guest meals;

(2) Private duty nursing;

(3) Supplies, drugs, appliances, or equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient;

(4) A laboratory test not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists;

(5) Private accommodations unless medically necessary and so ordered by the attending physician; or

(6) The following listed surgical procedures, except if a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision), or muscle;

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts or condylomas, anterior nose bleeds, or cervix;

(c) Circumcision;

(d) Dilation: dilation and curettage (diagnostic or therapeutic nonobstetrical); dilation or probing of lacrimal duct;

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, or joint;

(f) Pelvic exam under anesthesia;

(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, or subcutaneous fistulas;

(h) Extraction: foreign body or teeth;

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter);

(j) Hymenotomy;

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure or fractures;

(l) Meatotomy or urethral dilation, removal calculus and drainage of bladder without incision;

(m) Myringotomy with or without tubes, otoplasty;

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy;

(o) Removal; IUD, fingernail or toenails;

(p) Tenotomy hand or foot;

(q) Vasectomy; or

(r) Z-plasty for relaxation of scar or contracture.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: October 12, 2006

FILED WITH LRC: October 12, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions for inpatient hospital care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions for inpatient hospital care.

(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 inpatient hospital care coverage provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing inpatient hospital care coverage provisions.

(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 utilization of clinical criteria by the department to determine the appropriateness of any given service. The amended after comments regulation removes from the original amendment Section 3(4) and (5), which would have exempted from Medicaid coverage: 1) a hospital admission for less than 24 hours; or 2) a weekend stay associated with a Friday or Saturday admission for an elective surgical or diagnostic procedure that is not considered an emergency

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation and amended after comments regulation are necessary to ensure appropriateness of care and to maintain the viability of the Medicaid program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation and amended after comments regulation conform to the content of the authorizing statutes by establishing the use of clinical criteria to determine the appropriateness of care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation and amended after comments regulation assist in the effective administration of the statutes by establishing the use of clinical criteria to determine the appropriateness of care.

(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 inpatient hospital service providers participating in the Kentucky Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, inpatient hospital providers will be reimbursed for nonemergency admissions only if such admissions are determined, prior to admission, to be medically necessary and clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (c): No costs are required of regulated entities for compliance with this amendment and amended after comments regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation and amended after comments regulation establishes the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care as well as clarify services requiring prior authorization.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(b) On a continuing basis: DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding 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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(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 STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all inpatient hospital service providers participating in the Kentucky Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194.050[, 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 has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers 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 sets forth the provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on behalf of [in behalf of both] the categorically needy and medically needy.

Section 1. Definitions. (1) "Comprehensive choices" means comprehensive choices as defined in 907 KAR 1:900, Section 1.

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

(3) [(2)] "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(4) "Family choices" means family choices as defined in 907 KAR 1:900, Section 1.

(5) "Global choices" means global choices as defined in 907 KAR 1:900, Section 1.

(6) [(3)] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(7) [(4)] "Nonemergency" means that a condition does not require an emergency service pursuant to 42 C.F.R. 447.53.

(8) "Optimum choices" means optimum choices as defined in 907 KAR 1:900, Section 1.

Section 2. Coverage [Covered] Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b)1 and 2 of this sub-

section:

1. Magnetic resonance imaging (MRI);
2. Magnetic resonance angiogram (MRA);
3. Magnetic resonance spectroscopy;
4. Positron emission tomography (PET);
5. Cineradiography/videoradiography;
6. Xeroradiography;
7. Ultrasound subsequent to second obstetric ultrasound;
8. Myocardial imaging;
9. Cardiac blood pool imaging;
10. Radiopharmaceutical procedures;
11. Gastric restrictive surgery or gastric bypass surgery;
12. A procedure that is commonly performed for cosmetic purposes;
13. A surgical procedure that requires completion of a federal consent form; or
14. An unlisted procedure or service. [Outpatient surgery (performed in an outpatient hospital setting);
2. Cardiac catheterization;
3. Lithotripsy;
4. Computed tomography (CT) imaging;
5. Computed tomographic angiography (CTA);
6. Computed tomography guidance;
7. Magnetic resonance imaging (MRI);
8. Magnetic resonance angiogram (MRA);
9. Magnetic resonance spectroscopy;
10. Positron emission tomography (PET);
11. Dual energy X-ray absorptiometry (DXA);
12. Radiographic absorptiometry;
13. Cineradiography/videoradiography;
14. Xeroradiography;
15. Ultrasound subsequent to second (2nd) obstetric ultrasound;
16. Unlisted procedure;
17. Myocardial imaging;
18. Cardiac blood pool imaging;
19. Single Photon Emission Computed Tomography (SPECT);
20. Sensory nerve conduction test (SNCT);
21. Magnetic resonance cholangiopancreatography (MRCP);
22. Topographic brain mapping;
23. Magnetic source imaging;
24. Fluorine-18 fluorodeoxyglucose (F-18 FDG) imaging;
25. Electron beam computed tomography (also known as Ultrafast CT, Cine CT); and
26. Magnetic Resonance Technology (MRT) General.]

(b) An outpatient hospital service, including those [not] identified in paragraph (a) of this subsection, shall be:

1. Medically necessary; and
2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service; or

(b) A radiology procedure if the member has a cancer or transplant diagnosis code.

(3) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(4) The [A] following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly-licensed dentist:

(a) A diagnostic service ordered by a physician;

(b) A therapeutic service, except for occupational therapy, ordered by a physician;

(c) An emergency room service provided in an emergency situation as determined by a physician; or

(d) A drug, biological, or injection administered in the outpatient hospital setting.

(4) A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

Section 3. Hospital Outpatient Services Not Covered by the Department. The following services shall not be considered a covered hospital outpatient service:

(1) An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

(2) A service for which:

(a) An individual has no obligation to pay; and

(b) No other person has a legal obligation to pay;

(3) A medical supply or appliance, unless it is incident to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medical Assistance Program for hospital outpatient services;

(4) A drug, biological, or injectable purchased by or dispensed to a patient; or

(5) A routine physical examination.

Section 4. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a member of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a member of the:

1. Comprehensive Choices benefit package; or
2. Optimum Choices benefit package; and

(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit package.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a member of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a member of the:

1. Comprehensive Choices benefit package; or
2. Optimum Choices benefit package; and

(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit package.

(3) The therapy limits established in subsections (1) and (2) of this section shall be soft, meaning that they may be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(4) Except for recipients under age twenty-one (21), prior authorization is required for each visit that exceeds the limit established in subsections (1) and (2) of this section. [Hospital Outpatient Services Covered by the Medical Assistance Program. There are no limitations on the number of hospital outpatient visits or services available to program recipients.

(1) Hospital outpatient services to be covered, as listed below, shall be prescribed by, or in the case of emergency room services, determined to be medically necessary by a duly licensed physician, or if applicable, a duly licensed dentist, for the care and treatment indicated in the management of illness, injury, impairment or maternity care, or for the purpose of determining the existence of an illness or condition in a patient. The services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly licensed dentist.

(a) Diagnostic services as ordered by a physician.

(b) Therapeutic services as ordered by a physician.

(c) Emergency room services in emergency situations as determined by a physician.

(d) Effective with regard to services provided on or after July 1, 1990, drugs, biologicals, or injections administered in the outpatient hospital setting.

(2) Hospital outpatient services for maternity care may be provided by an advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife or by a registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Human Resources.

Section 2. Hospital Outpatient Services not Covered by the Medical Assistance Program.

(1) Items and services which are not reasonable and neces-

~~sary for or related to the diagnosis or treatment of illness or injury, impairment or maternity care.~~

~~(2) Services for which the individual has no obligation to pay and for which no other person has a legal obligation to provide or to pay.~~

~~(3) Medical supplies and appliances except those incident to the performance of services in the hospital outpatient department and which are included in the rate of payment established by the Kentucky Medical Assistance Program for hospital outpatient services.~~

~~(4) Drugs, biologicals and injectables purchased by or dispensed to a patient.~~

~~(5) Routine physical examinations.~~]

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes reimbursement criteria for services provided by dentists to Medicaid recipients.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of dental services to Kentucky's indigent citizenry.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement criteria for payment of medically necessary dental services to Medicaid recipients.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of
(a) How the amendment will change this existing administrative regulation: This amendment is being promulgated as a companion to 907 KAR 1:026E (Dental Services). 907 KAR 1.026E enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). This administrative regulation increases reimbursement for dental services to individuals under 21 years of age, increases reimbursement for a disabling malocclusion, and establishes reimbursement (in conjunction with 907 KAR 1:026) for a full mouth debridement for pregnant women. The amended after comments regulation adds the following to the grid of procedures that are reimbursable for recipients under 21 years of age: "Replace missing or broken tooth on denture". This procedure is covered at an upper limit of $40.30. The amended after comments regulation also deletes the following from the grid of procedures that are reimbursable for recipients under 21 years of age: "topical fluoride with prophylaxis"; "apicoectomy, root surgery molar" (this procedure is a duplication of a procedure already listed); and "surgical removal of impacted tooth with mucoper flap".
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services) which is a component of the Medicaid transformation known as KyHealth Choices. The amendments are necessary to promote dental coverage access for individuals under 21 years of age as well as to enhance coverage for pregnant women. The amended after comments regulation is necessary to make changes agreed upon with the chair of the Dental Technical Advisory Council.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments and the amended after comments regulation promote dental coverage access for individuals under 21 years of age, as well as to enhance coverage for pregnant women in accordance with authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: The amendment and the amended after comments regulation promote dental coverage access for individuals under 21 years of age, as well as to enhance coverage for pregnant women in accordance with authorizing statutes.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment and amended after comments regulation will affect all Medicaid program dental providers, recipients under 21 years of age and pregnant women receiving dental services.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No further action is required of regulated entities for compliance with this amendment and amended after comments regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are required of regulated entities for compliance with this amendment and amended after comments regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dental reimbursement rates will increase for services provided to individuals under 21 years of age. Dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure, and providers will receive a higher reimbursement for a disabling malocclusion service.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services) which the Department for Medicaid Services (DMS) estimates could save approximately a potential maximum of $12.4 million ($8 47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually; however, the savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted at this time.
(b) On a continuing basis: This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services)which the Department for Medicaid Services (DMS) estimates could save approximately a potential maximum of $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually; however, the savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted at this time.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for implementation and enforcement of 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This

administrative regulation does not establish or increase 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 STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment and amended after comments regulation will affect dental providers enrolled in the Medicaid program. This amendment will also affect the Medicaid program administered by the Cabinet for Health and Family Services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Because this amendment and amended after comments regulation is being promulgated as a companion to 907 KAR 1:026E (Dental Services), which enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages), this amendment is authorized by the Deficit Reduction Act of 2005 (Pub.L. 109-171).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation; however, dental reimbursement rates will increase for services provided to individuals under 21 years of age. Dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure and providers will receive a higher reimbursement for a disabling malocclusion service.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation; however, dental reimbursement rates will increase for services provided to individuals under 21 years of age. Dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure and providers will receive a higher reimbursement for a disabling malocclusion service.

(c) How much will it cost to administer this program for the first year? This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services), which the Department for Medicaid Services (DMS) estimates could save approximately a potential maximum of $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2 6 million state funds) annually.

(d) How much will it cost to administer this program for subsequent years? This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services), which the Department for Medicaid Services (DMS) estimates could save approximately a potential maximum of $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually.

Note: 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 Physician and Special Services
(Amended After Comments)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a-d, Pub L. 109-171 [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 the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to dental services including new limit provisions as authorized by Pub.L. 109-171.

Section 1. Definitions. (1) "Comprehensive orthodontic" means a medically-necessary dental service for treatment of a dentofacial malocclusion which requires application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure for removing thick or dense deposits on the teeth which is required when tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, and gum disease. A debridement is not the same as a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque and or calculus.

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

(5) "Disabling malocclusion" means that a patient:

(a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;

(b) Has a true anterior open bite that does not include:

1. One (1) or two (2) teeth slightly out of occlusion; or

2. Where the incisors have not fully erupted;

(c) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);

(d) Has an anterior crossbite that involves:

1. More than two (2) teeth in crossbite;

2. Obvious gingival stripping; or

3. Recession related to the crossbite;

(e) Demonstrates handicapping posterior transverse discrepancies which may include several teeth, one (1) of which shall be a molar and is handicapping in a function fashion as follows:

1. Functional shift;

2. Facial asymmetry;

3. Complete buccal or lingual crossbite; or

4. Speech concern;

(f) Has a significant posterior open bite that does not involve:

1. Partially erupted teeth; or

2. One (1) or two (2) teeth slightly out of occlusion;

(g) Except for third molars, has impacted teeth that will not erupt into the arches without orthodontic or surgical intervention;

(h) Has extreme overjet in excess of eight (8) to nine (9) milli-

meters and one (1) of the skeletal conditions specified in paragraphs (a) through (g) of this subsection:

(i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures, and does not include simple loss of teeth with no other affects;

(j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

(k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; or

(l) Has developmental anodontia in with several congenitally missing teeth result in a handicapping malocclusion or arch deformation.

(6) [(4)] "Direct practitioner contact" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) [(5)] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional practitioner resources; or

(b) Is clinically integral to the performance of the primary procedure.

(8) [(6)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

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

(10) [(8)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other 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 CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(11) [(9)] "Other licensed medical professional" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.

(12) [(10)] "Prepayment review" or "PPR" means a departmental review process of a claim to determine if Medicaid requirements have been met prior to authorizing payment.

(13) [(11)] "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(14) [(12)] "Provider" is defined in KRS 205.8451(7).

(15) [(13)] "Recipient" is defined in KRS 205.8451(9).

(16) [(14)] "Resident" is defined in 42 C.F.R. 415.152.

Section 2. Conditions of Participation. (1) A participating provider shall be licensed in the state in which the practice is located.

(2) A participating provider 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 appeals process, and sanctions; and

(c) 907 KAR 1.672; Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating provider shall comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S C. 1320d and 45 C.F.R. Parts 160 and 164.

(4) A participating provider shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of the decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department for:

1. Being:

a. Incidental;

b. Integral; or

c. Mutually exclusive;

2. Incorrect billing procedures, including incorrect bundling of procedures;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements in accordance with 42 C.F.R. 447.45.

Section 3. Record Maintenance. (1) A provider shall maintain comprehensive legible medical records which substantiate the services billed.

(2) A medical record shall be signed by the provider and dated to reflect the date of service.

(3) An X-ray shall be of diagnostic quality and shall include the:

(a) Recipient's name;

(b) Service date; and

(c) Provider's name.

(4) A treatment regimen shall be documented to include:

(a) Diagnosis;

(b) Treatment plan;

(c) Treatment and follow-up; and

(d) Medical necessity.

(5) Medical records, including x-rays, shall be maintained in accordance with 907 KAR 1:672, Section 4(3) and (4).

Section 4. General Coverage Requirements. (1) A covered service shall be:

(a) Medically necessary; [and]

(b) Except as provided in subsection (2) of this section, furnished to a recipient through direct practitioner contact; and

(c) Unless a recipient's provider demonstrates that dental services in excess of the following service limitations are medically necessary, limited to:

1. Two (2) prophylaxis per twelve (12) month period for a recipient under age twenty-one (21);

2. One (1) dental visit per month per provider for a recipient age twenty-one (21) years and over; and

3. One (1) prophylaxis per twelve (12) month period for a recipient age twenty-one (21) years and over.

(2) A covered service provided by an individual who meets the definition of other licensed medical professional shall be covered if the:

(a) Individual is employed by the supervising oral surgeon, dentist, or dental group;

(b) Individual is licensed in the state of practice; and

(c)1. Supervising provider has direct practitioner contact with the recipient, except for a service provided by a dental hygienist in accordance with KRS 313.310.

2. A dental hygienist may provide a service without direct practitioner contact if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.310.

(3)(a) A medical resident may provide services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174; or

(b) A dental resident, student, or dental hygiene student may provide services under the direction of a program-participating provider in or affiliated with an American Dental Association-accredited institution.

(4) Coverage shall be limited to services identified in 907 KAR 1:626, Section 3, in the following CDT categories:

(a) Diagnostic;

(b) Preventive;

(c) Restorative;

(d) Endodontics;

(e) Periodontics;

(f) Removable prosthodontics;

(g) Maxillofacial prosthetics;

(h) Oral and maxillofacial surgery;

(i) Orthodontics; or

(j) Adjunctive general services.

Section 5. Diagnostic Service Coverage Limitations. (1)(a)

Coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider. An exception shall apply and the department shall cover a second comprehensive oral evaluation if provided in conjunction with a prophylaxis to an individual under twenty-one (21) years of age; and

(b) A comprehensive oral evaluation shall not be covered in conjunction with the following:

1. A limited oral evaluation for trauma related injuries;
2. Space maintainers;
3. Root canal therapy;
4. Denture relining;
5. Transitional appliances;
6. A prosthodontic service;
7. Temporomandibular joint therapy;
8. An orthodontic service;
9. Palliative treatment; or
10. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:

1. Be limited to a trauma related injury or acute infection;
2. Be limited to one (1) per date of service, per recipient, per provider; and
3. Require a prepayment review; and

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:

1. A periapical x-ray;
2. Bitewing x-rays;
3. A panoramic x-ray;
4. Resin, anterior;
5. A simple or surgical extraction;
6. Surgical removal of a residual tooth root;
7. Removal of a foreign body;
8. Suture of a recent small wound; [or]
9. Intravenous sedation; or
10. Incision and drainage of infection.

(3) An x-ray necessary for a root canal or oral surgical procedure, or an x-ray that exceeds the following service limitation and is determined to be medically necessary by the department, shall not be subject to the following [limitations shall apply to coverage of a radiograph service]:

(a) Bitewing x-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider[, per provider];

(b) Periapical x-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider[, per provider];

(c) An intraoral complete x-ray series shall be limited to one (1) per twelve (12) month period, per recipient, per provider[, per provider];

(d) Periapical and bitewing x-rays shall not be covered in the same twelve (12) month period as an intraoral complete x-ray series per recipient, per provider[, per provider];

(e) A panoramic film shall:

1. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider [, per provider]; and

2. Require prior authorization in accordance with Section 15(2) and (3) of this administrative regulation for a recipient under age six (6);

(f) A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider[, per provider]; or

(g) Cephalometric and panoramic x-rays shall not be covered in conjunction with a comprehensive orthodontic consultation.

Section 6. Preventive Service Coverage Limitations. (1)(a) Coverage of a prophylaxis shall be limited to:

1. For an individual twenty-one (21) years of age and over, one (1) per twelve (12) month period, per recipient; and

2. For an individual under twenty-one (21) years of age, two (2) per twelve (12) month period, per recipient; and

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling and root planing

(2)(a) Coverage of a sealant shall be limited to:

1. A recipient age five (5) through twenty (20) years;
2. Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and
3. An occlusal surface that is noncarious; and

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same date of service[, and

(c) A provider shall be responsible for maintaining a sealant for four (4) years at no additional expense to the recipient or the department].

(3)(a) Coverage of a space maintainer shall be limited to a recipient under age twenty-one (21); and

(b) Require the following:

1. Fabrication;
2. Insertion;
3. Follow-up visits;
4. Adjustments; and
5. Documentation in the recipient's medical record to:

a. Substantiate the use for maintenance of existing intertooth space; and

b. Support the diagnosis and a plan of treatment that includes follow-up visits.

(c) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(d) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination thereof shall not exceed two (2) per twelve (12) month period, per recipient.

(4)(a) A full mouth debridement shall only be covered for a pregnant woman; and

(b) Only one (1) full mouth debridement per pregnancy shall be covered.

Section 7. Restorative Service Coverage Limitations. (1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall be:

(a) Limited to a recipient under age twenty-one (21); and

(b) Inclusive of any procedure performed for restoration of the same tooth.

(3) Coverage of a pin retention procedure shall be limited to:

(a) A permanent molar;

(b) One (1) per tooth, per date of service, per recipient; and

(c) Two (2) per permanent molar, per recipient.

(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:

(a) An amalgam, three (3) or more surfaces;

(b) A permanent prefabricated resin crown, or

(c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations. (1) Coverage of the following endodontic procedures shall be limited to a recipient under age twenty-one (21):

(a) A pulp cap direct;

(b) Therapeutic pulpotomy; or

(c) Root canal therapy.

(2) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

(3)(a) Coverage of root canal therapy shall require:

1. Treatment of the entire tooth;
2. Completion of the therapy; and
3. An x-ray taken before and after completion of therapy.

(b) The following root canal therapy shall not be covered:

1. The Sargenti method of root canal treatment; or
2. A root canal on one (1) root of a molar.

Section 9. Periodontic Service Coverage Limitations. (1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:

(a) A recipient with gigival overgrowth due to a:

1. Congenital condition;
2. Hereditary condition; or
3. Drug-induced condition; and

(b) One (1) per tooth or per quadrant, per provider, per twelve (12) month period.

1. Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than two (2) teeth within the same quadrant.

(2) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:

(a) Pocket-depth measurements;

(b) A history of nonsurgical services; and

(c) Prognosis.

(3) Coverage for a periodontal scaling and root planing procedure shall:

(a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;

(b) Require prior authorization in accordance with Section 15(2) and (4) of this administrative regulation; and

(c) Require documentation to include:

1. A periapical film or bitewing x-ray; and

2. Periodontal charting of preoperative pocket depths.

(4) Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

(5) Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.

Section 10. Prosthodontic Service Coverage Limitations. (1) A removable prosthodontic or denture repair shall be limited to a recipient under age twenty-one (21).

(2) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:

(a) Repair resin denture base; and

(b) Repair cast framework.

(3) Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:

(a) Replacement of a broken tooth on a denture;

(b) Laboratory relining of:

1. Maxillary dentures; or

2. Mandibular dentures;

(c) An interim maxillary partial denture; or

(d) An interim mandibular partial denture.

(4) An interim maxillary or mandibular partial denture shall be limited to use:

(a) During a transition period from a primary dentition to a permanent dentition;

(b) For space maintenance or space management; or

(c) As interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board certified prosthodontist:

(1) A nasal prosthesis;

(2) An auricular prosthesis;

(3) A facial prosthesis;

(4) A mandibular resection prosthesis;

(5) A pediatric speech aid,

(6) An adult speech aid;

(7) A palatal augmentation prosthesis;

(8) A palatal lift prosthesis;

(9) An oral surgical splint; or

(10) An unspecified maxillofacial prosthetic.

Section 12. Oral and Maxillofacial Service Coverage Limitations. (1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall.

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a three (3) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

(a) Be covered for temporomandibular joint therapy;

(b) Require prior authorization in accordance with Section 15(2) and (5) of this administrative regulation;

(c) Be limited to a recipient under age twenty-one (21); and

(d) Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to one (1) per date of service.

(7) Except as specified in subsection (8) of this section, a service provided by an oral surgeon shall be covered in accordance with 907 KAR 3:005, Physicians' services.

(8) If performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:

(a) Extractions;

(b) Impactions, and

(c) Surgical access of an unerupted tooth.

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

(a) Be limited to a recipient under age twenty-one (21); and

(b) Require prior authorization.

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) The department shall only cover new orthodontic brackets or appliances.

(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to:

1. The correction of a disabling malocclusion; or

2. Transitional or full permanent dentition unless for treatment of a cleft palate or severe facial anomaly.

(7) Coverage of comprehensive orthodontic treatment shall not be inclusive of orthognathic surgery.

(8) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) A referral form, if applicable; and

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for treatment provided.

(9) Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon submission of prior authorization requirements specified in Section 15(2) and (7) of this administrative regulation if treatment:

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations. (1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except radiographs.

(2)(a) Coverage of a hospital call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call shall not be covered in conjunction with:

1. Limited oral evaluation;

2. Comprehensive oral evaluation; or

3. Treatment of dental pain.

(3)(a) Coverage of intravenous sedation shall be limited to a recipient under age twenty-one (21).

(b) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1) Prior authorization shall be required for the following:

(a) A panoramic film for a recipient under age six (6);

(b) Periodontal scaling and root planing;

(c) An occlusal orthotic device;

(d) A preorthodontic treatment visit;

(e) Removable appliance therapy;
(f) Fixed appliance therapy; or
(g) A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:
(a) A MAP-9, Prior Authorization for Health Services;
(b) Additional forms or information as specified in subsections (3) through (7) of this section; and
(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;
(b) Panoramic film or intraoral complete series; and
(c) Dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;
(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;
(c) Cephalometric x-rays with tracing;
(d) A panoramic x-ray;
(e) Intraoral and extraoral facial frontal and profile pictures;
(f) Occluded and trimmed dental models;
(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required;
(h) After six (6) monthly visits are completed, but not later than twelve (12) months after the banding date of service:
1. A MAP 559, Six (6) Month Orthodontic Progress Report; and
2. An additional MAP 9, Prior Authorization for Health Services; and
(i) Within three (3) months following completion of the comprehensive orthodontic treatment:
1. Beginning and final records; and
2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(8) Upon receipt and review of materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(9) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(10) Prior authorization shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the provider.

(11) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

Section 16. Appeal Rights. (1) 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.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.560.

(3) 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.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP 9, Prior Authorization for Health Services, December 1995 edition";
(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement, December 1995 edition";
(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form, December 1995 edition";
(d) "MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form, March 2001 edition";
(e) "MAP 559, Six (6) Month Orthodontic Progress Report, December 1995 edition"; and
(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission, December 1995 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner

APPROVE BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the provision and receipt of dental services under the Medicaid program.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills the requirements of KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria for the provision of medically-necessary dental services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). The amendment defines the term "disabling malocclusion", a condition for which corrective treatment is covered; establishes limitations on dental services by limiting the number of dental cleanings covered per year as well as number of visits per month; allows services provided by a dental hygienist in accordance with KRS 313.310 and delivered under the general supervision of a practitioner to be covered; permits coverage for services delivered by a dental resident, student, or dental hygiene student under the direction of a participating provider in an American Dental Association-accredited institution; exempts x-rays necessary for a root canal or oral surgical procedure from the limit on the number of covered x-rays; and establishes coverage of full mouth debridements for pregnant women. These actions are being taken in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global

choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. The amended after comments regulation clarifies that individuals age 21 and over are subject to a soft limit of 1 dental visit per month per provider. The amended after comments regulation further clarifies that two comprehensive oral evaluations during a 12-month period may be covered for members under 21 years of age if the second comprehensive oral evaluation is provided in conjunction with a prophylaxis. The amended after comments regulation also clarifies that a limited oral evaluation will be covered in cases of acute infection, adds "surgical extraction" and "incision and drainage of infection" to the list of services for which a limited oral evaluation may be covered if provided in conjunction with either of these services, and restores the original regulatory language of Section 5(3) to reflect that the limitation on the number of x-rays shall be per recipient, per provider.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maintain the financial viability of the Medicaid program and is enacted in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. The amended after comments regulation is necessary to further clarify the department's coverage criteria for dental services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and the amended after comments regulation establishes limitations on dental services as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services and in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. This amendment further conforms with the state Dental Practice Act by allowing dental hygienists to apply sealants or provide other services in accordance with KRS 313.310 while being under the general supervision, rather than direct supervision, of a dentist.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and the amended after comments regulation establishes limitations on dental services as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services and in conjunction with 907 KAR 1.900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. This amendment further conforms with the state Dental Practice Act by allowing dental hygienists to apply sealants or provide other services in accordance with KRS 313.310 while being under the general supervision, rather than direct supervision, of a dentist.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all Medicaid recipients who are subject to the new service limitations as well as dental providers enrolled in the Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The above groups will be subject to new service limitations required by KyHealth Choices in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not be expected to incur additional costs in order to comply with this administrative regulation.; however, regulated entities will be subject to service limitations required by KyHealth Choices, Medicaid's transformation initiative approved on May 3, 2006, by the Centers for Medicare and Medicaid Services (CMS) under the provisions of the Deficit Reduction Act of 2005 (DRA).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The service limitations on dental services are authorized by the DRA and CMS in conjunction with 907 KAR 1.900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program that tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates a potential maximum savings of approximately $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually as a result of this amendment; however, the savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted at this time.

(b) On a continuing basis: DMS anticipates a potential maximum savings of approximately $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually as a result of this amendment; however, the savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted 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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering. Is tiering applied? This administrative regulation includes tiering, by age, in order to assist transforming the Medicaid program into one tailored to individual medical needs and circumstances in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all Medicaid recipients who are subject to the new service limitations, as well as dental providers enrolled in the Medicaid program. This amendment will also affect the Medicaid program administered by the Cabinet for Health and Family Services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Because this amendment and amended after comments regulation enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E(KyHealth Choices Benefits Packages), this amendment is authorized by the Deficit Reduction Act of 2005 (Pub.L. 109-171).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year; however, DMS anticipates a potential maximum savings of approximately $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually as a result of this amendment. The exact savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted at this time.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years of implementation; however, DMS anticipates a potential maximum savings of approximately $12.4 million ($8 47 million federal funds; $3.93 million state funds) annually as a result of this amendment. The exact savings are indeterminable given that the limits are soft (may be overridden) and utilization cannot be accurately predicted at this time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(Amended After Comments)

907 KAR 1:038. Hearing and Vision Program services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.140, 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, sec. 1902(a) of the Social Security Act, sec. 1925 of the Social Security Act

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 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 hearing services and vision program services for which payment shall be made by the Medicaid Program and amends coverage in accordance with Pub L. 109-171.

Section 1. Definitions. (1) "Comprehensive choices" means **comprehensive choices as defined in 907 KAR 1:900, Section 1** ~~[a benefit package for recipients who:~~

~~(a) Meet the nursing facility patient status criteria established in 907 KAR 1:022; and~~

~~(b) Receive services through:~~

~~1. A nursing facility in accordance with 907 KAR 1:022;~~

~~2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;~~

~~3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or~~

~~4. The Model Waiver II Program in accordance with 907 KAR 1:595].~~

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(4) ~~[(3)]~~ "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(5) ~~[(4)]~~ "Family choices" means **family choices as defined in 907 KAR 1:900, Section 1.** ~~[a benefit package for children covered pursuant to:~~

~~(a) Section 1902(a)(10)(A)(i)(I) and 1931 of the Social Security Act;~~

~~(b) Section 1902(a)(52) and 1925 of the Social Security Act (excluding children eligible under Part A or E of title IV);~~

~~(c) Section 1902(a)(10)(A)(i)(IV) as described in 1902(l)(1)(B) of the Social Security Act;~~

~~(d) Section 1902(a)(10)(A)(i)(VI) as described in 1902(l)(1)(C) of the Social Security Act;~~

~~(e) Section 1902(a)(10)(A)(i)(VII) as described in 1902(l)(1)(D) of the Social Security Act; or~~

~~(f) 42 C.F.R. 457.310.~~

~~(5) "Global choices" means the department's default benefit package for the following populations:~~

~~(a) Caretaker relatives of children who:~~

~~1. Receive K-TAP and are deprived due to death, incapacity, or absence;~~

~~2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or~~

~~3. Do not receive K-TAP and are deprived due to unemployment;~~

~~(b) Individuals aged sixty-five (65) and older who receive SSI and~~

~~1. Do not meet nursing facility patient status criteria in accor-~~

~~dance with 907 KAR 1:022; or~~

~~2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

~~(c) Blind individuals who receive SSI and:~~

~~1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or~~

~~2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

~~(d) Disabled individuals who receive SSI and:~~

~~1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or~~

~~2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

~~(e) Individuals aged sixty-five (65) and older who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

~~(f) Blind individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022; or~~

~~(g) Disabled individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022.]~~

(6) "Global choices" means global choices as defined in 907 KAR 1:900, Section 1.

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

(8) ~~[(7)]~~ "Nonemergency" means that a condition does not require an emergency service pursuant to 42 C.F.R. 447.53.

(9) ~~[(8)]~~ "Optimum choices" means **optimum choices as defined in 907 KAR 1:900, Section 1.** ~~[a benefit package for recipients who:~~

~~(a) Meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022; and~~

~~(b) Receive services through:~~

~~1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or~~

~~2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145.~~

~~Section 2. Coverage Criteria. (1) Prior to the delivery of a covered hearing or vision service, the service shall be determined by the department to be:~~

~~(a) Medically necessary; and~~

~~(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.~~

~~(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.]~~

Section **2.** ~~[3.]~~ Hearing Services. (1) All hearing coverage shall be limited to an individual under age twenty-one (21).

(2) Unless a recipient's health care provider demonstrates that services in excess of the following limitations are medically necessary, reimbursement for services provided by a certified audiologist to a recipient shall be limited to:

(a) One (1) complete hearing evaluation per year;

(b) One (1) hearing aid evaluation per year;

(c)1. Three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid; and

2. A follow-up visit shall be related to the proper fit and adjustment of that hearing aid; and

(d) One (1) additional follow-up visit at least six (6) months following fitting of a hearing aid.

(3) Hearing aid benefit coverage shall:

(a) ~~[Be contingent upon prior authorization granted by the department;~~

~~(b)~~] Be for a hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer; and

(b) ~~[(c)]~~ Not exceed **$800** ~~[$1,400]~~ per ear every thirty-six (36) months.

Section **3.** ~~[4.]~~ Vision Program Services. (1) Vision program coverage shall be limited to:

(a) A prescription service;

(b) A repair service made to a frame;

(c) A diagnostic service provided by:

1. An ophthalmologist; or

2. An optometrist to the extent the optometrist is licensed to perform the service.

(2) Eyeglass coverage shall:

(a) Be limited to a recipient who is under twenty-one (21); and

(b) Not exceed:

1. $200 per year for a recipient in the global choices benefit package; or

2. $400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.

(3) To be covered:

(a) A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) and over; and

(b) A radiology service specified in 907 KAR 3:005, Section 5, shall require prior authorization regardless of a recipient's age. ~~[A recipient who is under age twenty-one (21):~~

~~(b) Eyeglasses;~~

~~(c) Prescription services;~~

~~(d) Repair services made to a frame or lens; or~~

~~(e) Diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the department's physician service program.~~

~~(2) Eyeglass coverage shall not exceed:~~

~~(a) $200 per year for a recipient in the global choices benefit package; or~~

~~(b) $400 per year for a recipient in the comprehensive choices, family choices or optimum choices benefit package.~~

~~(3) The department shall reimburse for vision care pursuant to the vision care reimbursement methodology established in 907 KAR 3:005.]~~ ~~[Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services if medically necessary in accordance with 907 KAR 3:130 and provided to a child under age twenty one (21) by a certified audiologist:~~

~~(a) Complete hearing evaluation;~~

~~(b) Hearing aid evaluation;~~

~~(c) A maximum of three (3) follow up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid; and~~

~~(d) One (1) follow up visit six (6) months following fitting of a hearing aid.~~

~~(2) Hearing aid benefits. Coverage shall be limited to a child under age twenty one (21) for a hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A recipient shall be limited to one (1) hearing aid per ear, annually.~~

~~Section 2. Vision Program Services. (1) Coverage shall be limited to prescription services, repair services made to a frame or lens, and diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the physician's program.~~

~~(2) Medicaid shall use the current reimbursement methodology as referenced in 907 KAR 3:005.~~

~~(3) The coverage of eyeglasses shall be limited to:~~

~~(a) A child under age twenty one (21); and~~

~~(b) Two (2) pairs of eyeglasses per year per person.]~~

Section **4.** ~~[5.]~~ ~~[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.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1.671.

Section 5. [6.] [4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Vision Program Manual, October [May] 2006 [June 2004] edition", Department for Medicaid Services; and

(b) "The Hearing Program Manual, October [May] 2006 [July 1998] edition", Department for Medicaid Services.

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 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.

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 provisions relating to hearing and vision services.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically-necessary hearing and vision services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the use of criteria by the Department to determine the clinical appropriateness of delivered services. This amendment also limits coverage of vision services to individuals who are under 21 years of age The amendment further places limitations on hearing and vision services by limiting the number of hearing and hearing evaluation visits covered per year and capping the amount paid for hearing aids and eyewear. These actions are being taken in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program that tailors benefit packages to individual needs and circumstances, and emergency regulation is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. The amended after comments regulation removes from the original amendment a proposed regulatory provision that would have made all vision and hearing services subject to prior authorization. Instead, prior authorization will be required under the vision services program only if radiology services are provided, or if a service designated as a physical medicine and rehabilitation service CPT code is provided to a recipient age 21 and over. The amended after comments regulation also restores vision services, except for the coverage of eyeglasses, to recipients age 21 and over; reduces the dollar cap on hearing aids from $1400 per ear every 36 months to $800 per ear every 36 months; and deletes a reference to vision reimbursement, given that vision reimbursement is governed by 907 KAR 1:631.

(b) The necessity of the amendment to this administrative regulation: This amendment and amended after comments regulation are necessary to maintain the financial viability of the Medicaid program and is enacted in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments regulation establish limitations on hearing and vision services as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services and in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment and amended after comments regulation will assist in the effective administration of the authorizing statutes by limiting vision coverage as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services in order to maintain the financial viability of the Medicaid program and in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all Medicaid recipients who are subject to the new service limitations as well as hearing and vision providers enrolled in the Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation and amended after comments regulation, recipients under age 21 will be subject to new dollar caps on eyeglasses and hearing aids, and new limits on hearing and hearing evaluation visits. Providers will be subject to prior authorization for vision services if the service is a radiology service specified in 907 KAR 3:005 or a service designated as a physical medicine and rehabilitation ser-

vice CPT code and provided to recipients age 21 and over.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are required of regulated entities for compliance with this amendment and amended after comments regulation unless the cost of eyeglasses or a hearing aid exceeds the dollar cap established in this administrative regulation, in which case an eligible recipient would be responsible for the difference between the dollar cap and actual cost of the item.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation and amended after hearing regulation establishes: 1) A dollar cap on eyeglasses and hearing aids; 2) Prior authorization requirements on designated vision services; and 3) New limits on hearing and hearing evaluation visits in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates expects the amendments to the administrative regulation to be budget neutral.

(b) On a continuing basis: DMS anticipates expects the amendments to the administrative regulation to be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding 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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees; however, if the cost of eyeglasses or a hearing aid exceeds the dollar cap established in this administrative regulation, an eligible recipient would be responsible for the difference between the dollar cap and actual cost of the item.

(9) Tiering: Is tiering applied? This administrative regulation includes tiering in order to assist transforming the Medicaid program into one tailored to individual medical needs and circumstances in conjunction with 907 KAR 1.900E (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all Medicaid recipients who are subject to the new service limitations as well as all hearing and vision providers enrolled in the Medicaid program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years of implementation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

RELATES TO: KRS 205.520, 42 C.F.R. 424.57, 440.230, 441 Subpart B, 45 C F.R. 162.1002, 42 U.S.C. 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [~~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.~~] 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 coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics

Section 1. Definitions. (1) "Certificate of medical necessity" or "CMN" means a form required by the department [~~for Medicaid Services~~] to document medical necessity for durable medical equipment, medical supplies, prosthetics, and orthotics.

(2) "CMS" means the centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department [~~Kentucky Medicaid Program~~].

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modu-

lar components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) days prior to discharge from a hospital or nursing facility if:

1. For purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. No billing is done prior to the date of the recipient's discharge from the facility.

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

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(8) "Durable medical equipment" or "DME" means medical equipment which:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) **"Family choices" means family choices as defined in 907 KAR 1:900, Section 1.**

(10) "HCPCS" means the Healthcare Common Procedure Coding System.

(11) [~~(10)~~] "Home" means a place where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with mental retardation or a developmental disability [~~the mentally retarded (ICF-MR)~~]; or

(d) An institution for individuals with a mental disease [~~(IMD)~~] as defined in 42 U.S.C. 1396d(i).

(12) [~~(11)~~] "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service, and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(13) [~~(12)~~] "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(14) [~~(13)~~] "Medicaid DME Program Fee Schedule" means a list, located at http://chfs.ky.gov/dms, containing the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply.

(15) [~~(14)~~] "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

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

(17) [~~(16)~~] "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(18) [~~(17)~~] "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19) [~~(18)~~] "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20) [~~(19)~~] "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's assistant who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located,

(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of 907 KAR 1:671 and 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(21) [~~(20)~~] "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(22) [~~(21)~~] "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23) [~~(22)~~] "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(24) [~~(23)~~] "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(25) [~~(24)~~] "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except for the provision established in **subsection (2)(b) of this section** [~~paragraph (b) of this subsection~~], coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

1. [~~(a)~~] Be based on medical necessity and reasonableness;

2. [~~Effective August 1, 2006,~~] Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

3. [~~(b)~~] Require prior authorization in accordance with Section 7 of this administrative regulation;

4. [~~(c)~~] Be provided in compliance with 42 C.F.R. 440.230(c); and

5. [~~(d)~~] Be restricted to an item used primarily in the home.

(b) In addition to the prosthetic coverage requirements established in paragraph (a) of this subsection, **coverage of prosthetic devices shall not exceed $1,500 per twelve (12) month period for members of the family choices benefit plan** [~~prosthetic coverage limits shall be as established in 907 KAR 1:900E, Section 4(1) and (5)~~].

(2) Unless otherwise established in this administrative regulation:

(a) The criteria referenced in subsection (1)(a) of this section, except as established in paragraph (b) of this subsection, in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as a basis for the determination of coverage but shall be subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c); or

(b) If criteria referenced in subsection (1)(a) of this section does not exist or is unavailable for a given item or service, Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as a basis for the determination of coverage but shall be subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c). [~~For dates of service up to close of business July 31, 2006, Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic or medical supply is provided shall be used as a~~

~~basis for the determination of coverage, but shall be subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c); and~~

~~(b) For dates of service beginning August 1, 2006, the criteria referenced in subsection (1)(b) of this section in effect on the date the durable medical equipment, prosthetic, orthotic or medical supply is provided shall be used as a basis for the determination of coverage, but shall be subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).~~]

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for a period of five (5) years.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Food.

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only:

(a) A cane;

(b) Crutches;

(c) A standard walker;

(d) A prone or supine stander;

(e) A vest airway clearance system, excluding the generator;

(f) A noninvasive electric osteogenesis stimulator; and

(g) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only:

(a) An apnea monitor;

(b) A respiratory assist device having bivalve pressure capability with backup rate feature;

(c) A generator for use with a vest airway clearance system;

(d) A ventilator;

(e) A negative pressure wound therapy electric pump;

(f) An electric breast pump;

(g) The following oxygen systems:

1. Oxygen concentrator;

2. Stationary compressed gas oxygen;

3. Portable gaseous oxygen;

4. Portable liquid oxygen; or

5. Stationary liquid oxygen; and

(h) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) and (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(4)(a) A MAP-1001 form shall be completed if a recipient requests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) Completion of a MAP 1001 shall be as follows:

1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 whether or not they choose to receive a non-covered service;

3. The DME supplier shall complete the supplier information on the MAP 1001;

4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient;

5. The DME supplier shall maintain the completed MAP 1001 on file for at least five (5) years.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) Special coverage items identified in this Section shall be subject to the general coverage requirements established in Section 2 of this administrative regulation.

(2) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) Prior authorized by the department.

(3) [~~(2)~~] A customized DME item that is uniquely constructed or custom fabricated to meet the medical needs of an individual recipient shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(4) [~~(3)~~] A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to size or medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(5) [~~(4)~~] Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(6) [~~(5)~~] A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(7) [~~(6)~~] An enteral or oral nutritional supplement shall be covered if:

(a) Prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (8) [~~(7)~~] of this

section, it is the total source of a recipient's daily intake of nutrients;

(c) Prior authorized; and

(d) Nutritional intake is documented on the CMN.

(8) [(7)] An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If prior authorized.

(9) [(8)] A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(10) [(9)] An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If no warranty is in effect on the requested repair; and

(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically-necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; and

(h) An item determined not medically necessary by the department.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment, prosthetics, orthotics and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at **$300** [~~$150~~] or more;

(b) Rental of equipment **excluding oxygen services after twelve (12) continuous months of service**;

(c) A therapeutic shoe or boot,

(d) Orthopedic shoes;

(e) An adjustment to a prosthetic or orthotic;

(f) An augmentative communication device;

(g) A customized DME item;

(h) A replacement DME item, prosthetic, or orthotic;

(i) A nutritional supplement;

(j) An amino acid modified preparation or a low-protein modified food product;

(k) Rental of a replacement wheelchair or ventilator during a repair to the recipient's primary equipment;

(l) A DMEPOS item denoted by a general or nonspecific HCPCS code;

(m) An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;

(n) An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule; or

(o) An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.

(2) If an item requires prior authorization, a supplier shall comply with the following:

(a) Submit all required documentation prior to the date of service; or

(b)1. Submit a written request within seven (7) business days to the department for prior authorization which shall include the prescriber's order; and

2. After receiving acknowledgement from the department that the prior authorization request is being processed, submit to the department a completed CMN and prior authorization form within thirty (30) business days.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing or faxing the following information to the department:

(a) A completed prior authorization form MAP-9;

(b) A completed CMN; and

(c) If requested by the department, additional information required to establish medical necessity.

(8) The following additional information shall be required for prior authorization of a customized item:

(a) An estimate of the fitting time;

(b) An estimate of the fabrication time;

(c) A description of the materials used in customizing the item; and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b)1. [Effective August 1, 2006,] Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if criteria referenced in paragraph (b)1. of this subsection does not exist or is unavailable [the period of medical necessity but shall not exceed the maximum authorization period specified in the Medicaid DME Program Fee Schedule].

(11) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:

(a) [, effective August 1, 2006,] Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if criteria referenced in paragraph (b)1. of this subsection does not exist or is unavailable

(12)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid DME Program Fee Schedule; or

(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, [E1038,] E1161, E1220, E1229, E1231 through E1238, K0009 or K0014; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015 [E1019, E1021], E1028 through E1030, E2201 through E2204, E2300 through[,] E2301, E2310 through[,] E2311, E2320 through E2330, E2340 through E2343, E2399, E2601 through E2621, K0108, K0560 through K0669 or L8499.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

(b) The department shall post HCPCS code change information on its web site accessible at http://chfs.ky.gov/dms. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) [In accordance with 907 KAR 1:604,] If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604 [reimbursement shall be reduced by the amount of the copayment].

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1.006.

(5) Reimbursement for the purchase of an item that is currently being rented shall be:

(a) For an item that has been rented for less than three (3) months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; or

(b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(7) Except for [With the exception of] an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lessor of:

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

(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number and adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(2) Be enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:671 and 907 KAR 1:672;

(3) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(4) Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider so informed the recipient of noncoverage prior to providing the service.

Section 10. Appeal Rights. (1) 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.

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

(3) 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.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form MAP-9, Prior Authorization Form, February 2005 [~~December 1995~~] edition", Department for Medicaid Services;

(b) "Form MAP-1000, Certificate of Medical Necessity, February 2005 [~~June 2003~~] edition", Department for Medicaid Services;

(c) "Form MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Food, February 2005 [~~May 2004~~] edition", Department for Medicaid Services; [~~and~~]

(d) "Medicaid DME Program Fee Schedule, **October** [~~July~~] 2006 [~~November 1, 2004~~] edition"; and

(e) "Form MAP 1001, Advance Member Notice, September 2006 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. through 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes coverage and reimbursement criteria for provision of durable medical equipment 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(1)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria for the provision of medically necessary durable medical equipment services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the use of criteria to determine clinical appropriateness of durable medical equipment. The amendment after comments regulation clarifies that coverage of prosthetic devices shall not exceed $1500 per 12-month period for members of the Family Choices benefit plan, clarifies that Medicare criteria will be used to determine coverage if clinical appropriateness criteria pursuant to 907 KAR 3.130 does not exist or is unavailable, raises the prior authorization threshold from $150 to $300, and incorporates a new form for use when an individual requests an item or service not covered by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure appropriateness of durable medical equipment and to maintain the 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 the use of clinical criteria to determine the appropriateness of durable medical equipment.

(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 establishing the use of clinical criteria to determine the appropriateness of durable medical equipment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation. This amendment affects all durable medical equipment providers and recipients.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment after comments clarifies that Medicare criteria will be used to determine coverage if clinical appropriateness criteria pursuant to 907 KAR 3:130 does not exist or is unavailable, raises the prior authorization threshold from $150 to $300, and incorporates a new form for use when an individual requests an item or service not covered by the department. A durable medical equipment (DME) provider must use the new form for instances where an individual requests an item or service not covered by the Department for Medicaid Services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are required of regulated entities for compliance with this amendment and amended after comments regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment and amended after comments regulation establishes the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care as well as raises the prior authorization threshold from $150 to $300, and incorporates a new form for use when an individual requests an item or service not covered by the department.

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

(a) Initially: The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(b) On a continuing basis: DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(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 STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all durable medical equipment providers that are reimbursed by the department.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(c) How much will it cost to administer this program for the first year? The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(d) How much will it cost to administer this program for subsequent years? The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(Amended After Comments)

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, b, c, d, o, r-6, r-8, 1397aa-1397jj, Social Security Act 1902(a)(10)(A), 1902(a)(52), 1902(aa), 1902(l)(1)(B),(C),(D), 1905(a)(4)(C), 1905(o), 1931, HB 380 2006 GA [~~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), Pub. L. 109-171

NECESSITY, FUNCTION, AND CONFORMITY: 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, including those authorized by Pub L. 109-171, relating to imposing and collecting copayments, coinsurance and premiums from certain recipients.

Section 1. Definitions. (1) [~~"Caretaker relative" means a relative:~~

~~(a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and~~

~~(b) Who is seeking to qualify as a kinship caregiver.~~

~~(2) "Categorically needy children" means individuals under eighteen (18) years of age receiving Title IV-E benefits, SSI, or SSP, or who would have been eligible to receive Title IV-A benefits prior to July 16, 1996.~~

~~(3)~~] "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.

(2) [~~(4)~~] "Comprehensive choices" means **as defined in 907 KAR 1:900, Section 1** [~~a benefit package for individuals who meet the nursing facility patient status criteria established in 907 KAR 1:022, receive services through either a nursing facility in accordance with 907 KAR 1:022, the Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090, the Home and Community Based Waiver Program in accordance with 907 KAR 1:160 or the Model Waiver II Program in accordance with 907 KAR 1:595~~].

(3) [~~(5)~~] "Copayment" means a dollar amount [~~that~~] portion of the cost of a Medicaid benefit [~~service~~] that a recipient is required to pay.

(4) [~~(6)~~] [~~(2)~~] "Department" means the Department for Medicaid Services or its designee.

(5) [~~(7)~~] [~~(3)~~] "Drug" means a covered drug provided in accordance with 907 KAR 1:019 for which the Department for Medicaid Services provides reimbursement.

(6) [~~(8)~~] "Family choices" means **as defined in 907 KAR 1:900, Section 1** [~~a benefit package for individuals covered pursuant to Section 1902(a)(10)(A)(i)(I) and 1931 of the Social Security Act, Section 1902(a)(52) and 1925 of the Social Security Act (excluding children eligible under Part A or E of title IV), Section 1902(a)(10)(A)(i)(IV) as described in 1902(l)(1)(B) of the Social Security Act, Section 1902(a)(10)(A)(i)(VI) as described in 1902 (l)(1)(C) of the Social Security Act, Section 1902 (a)(10)(A)(i)(VII) as described in 1902 (l)(1)(D) of the Social Security Act, and 42 C.F.R. 457.310~~].

(7) [~~(9)~~] "Global choices" means **as defined in 907 KAR 1:900, Section 1** [~~the department's default benefit package and shall be for the following populations:~~

~~(a) Caretaker relatives of children who:~~

~~1. Receive K-TAP and are deprived due to death, incapacity, or absence;~~

~~2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or~~

~~3. Do not receive K-TAP and are deprived due to unemployment;~~

~~(b) Individuals aged sixty-five (65) and over who receive SSI:~~

~~1. But do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or~~

~~2. And receive SSP but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

~~(c) Blind individuals who receive SSI:~~

~~1. Who do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

2. And SSP but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI:

1. Who do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children;

2. And SSP but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022, or

(g) Disabled individuals who have lost SSI or SSP benefits and are eligible for "pass-through" Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022].

(8) [(10)] [(4) "Emergency condition" means a condition which requires an emergency service pursuant to 42 C.F.R. 447.53.

(5) "General ophthalmological service" means a service or procedure listed under this heading in the American Medical Association's Current Procedure Terminology (CPT).

(6) "Long-term care facilities" is defined by KRS 216.510(1).

(7)] "KCHIP" means the Kentucky Children's Health Insurance Program.

(9) [(11)] "KCHIP Children - Medicaid Expansion Program" **health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:020** [means a department program established in 907 KAR 4:020].

(10) [(12)] [(8)] "KCHIP Children - Separate CHIP [Separate Insurance] Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(11) [(13) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the Cabinet for Health and Family Services as an alternative to foster care.

(14)] "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(12) [(15)] [(9) "Mandatory eligibility group" means a group whose coverage is mandatory under 42 U.S.C. 1396a(a).

(10)] "Nonemergency[condition]" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(13) [(16)] "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list pursuant to 907 KAR 1:019.

(14) [(17) "Occupational therapy" means the practice of occupational therapy pursuant to KRS 319A.010, as covered by the department, and provided by an occupational therapist as defined in KRS 319A.010.

(18)] "Optimum choices" means **as defined in 907 KAR 1:900, Section 1** [a benefit package for individuals who meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022, who receive services through either an intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022, or who receive services through the Supports for Community Living Waiver Program in accordance with 907 KAR 1:145].

(15) [(19)] "Physical therapy" means physical therapy as defined in KRS 327.010, as covered by the department, and provided by a physical therapist as defined in KRS 327.010 and as covered by the department.

(16) [(20)] "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists and is available via the department's supplemental rebate program pursuant to 907 KAR 1:019.

(17) [(21)] [(11) "Optional eligibility group" means a group whose coverage is:

(a) Not identified as mandatory under 42 U.S.C. 1396a(a); and

(b) Is established as optional pursuant to 42 U.S.C. 1396a(a) or 42 U.S.C. 1396a(a).

(12)] "Premium" means an amount paid periodically to purchase health care benefits.

(18) [(22)] [(13)] "Recipient" is defined in KRS 205.8451 and applies to [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.

(19) [(23)] "Speech therapy" means the practice of speech pathology as defined in KRS 334A.020, as covered by the department, and provided by a speech-language pathologist as defined in KRS 334A.020.

(20) [(24) "SSI" means the Social Security Administration program named supplemental security income.

(25) "SSP" means state supplemental payments for individuals who are aged, blind, or disabled and in accordance with 921 KAR 2:015.

(26)] [(14)] "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. Comprehensive Choices Copayments and Coinsurance. (1) Following is a and establishing comprehensive choices copayment and coinsurance amounts, except for individuals excluded pursuant to Section 6(1) of this administrative regulation, and corresponding provider reimbursement deductions:

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, **not to exceed $20 per nonpreferred brand name drug prescription**	Full amount of the coinsurance
Emergency room for a nonemergency visit	5% coinsurance	No deduction
Durable Medical Equipment	3% coinsurance up to a maximum of $15	The amount of the coinsurance or, if applicable, $15

Podiatry office visit	$2 copayment	Full amount of the copayment
Vision services, general ophthalmological services, and optometry services	**$2 copayment**	**Full amount of the copayment**

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the comprehensive choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the comprehensive choices benefit plan.

Section 3. Family Choices Copayments and Coinsurance. (1)(a) Only KCHIP Children - Medicaid Expansion Program and KCHIP Children - Separate CHIP Program individuals, except for any individual excluded in accordance with Section 6(1), shall be family choices individuals subject to copayments or coinsurance;

(b) Following is a grid establishing copayment and coinsurance amounts, for individuals referenced in paragraph (a) of this subsection along with corresponding provider reimbursement deductions:

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Allergy service or testing (no copayment exists for injections)	$2 copayment	Full amount of copayment
Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists	$1 copayment	Full amount of copayment
Preferred brand name drug	$2 copayment	Full amount of copayment
Nonpreferred brand name drug	$3 copayment	Full amount of the copayment
Emergency room for a nonemergency visit	5% coinsurance	No deduction

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the family choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the family choices benefit plan.

Section 4. Global Choices Copayments and Coinsurance. (1) Following is a grid establishing global choices copayment and coinsurance amounts, except for individuals excluded pursuant to Section 6(1) of this administrative regulation, and corresponding provider reimbursement deductions:

Benefit	Copayment or Coinsurance	Copayment or Coinsurance Amount Deducted from Provider Reimbursement
Acute inpatient hospital admission	$50 copayment	Full amount of copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of copayment
Laboratory, diagnostic or radiology service		Full amount of copayment
Physician services ~~[office visit]~~	$2 copayment	No deduction
Visit to a rural health clinic, a primary care center, or a federally qualified health center	$2 copayment	Full amount of copayment
Dental office visit	$2 copayment	No deduction
~~[Occupational therapy]~~	~~[$2 copayment]~~	~~[Full amount of the copayment]~~
Physical therapy	$2 copayment	Full amount of the copayment
Speech therapy	$1 copayment	Full amount of the copayment
Chiropractic office visit	$2 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, **not to exceed $20 per nonpreferred brand name drug prescription**	Full amount of the coinsurance
Emergency room for a nonemergency visit	5% coinsurance	No deduction
Durable medical equipment	Three (3) percent coinsurance not to exceed $15	The amount of the coinsurance or, if applicable, $15
Podiatry office visit	$2 copayment	Full amount of the copayment
Optometry services	**$2 copayment**	**Full amount of the copayment**
General ophthalmological services	**$2 copayment**	**Full amount of the copayment**

(2)(a) **Physician services include** ~~[A physician office visit includes an office visit for]~~ care provided by a physician, a certified pediatric and family nurse practitioner, a nurse midwife, an advanced registered nurse practitioner, or a physician assistant.

(b) A physician office visit excludes a visit to a federally-qualified health center, rural health clinic, or a primary care center.

(3) ~~[Behavioral health services include mental health rehabilitation or stabilization, behavioral support, psychological services and inpatient psychiatric services.~~

~~(4)~~] A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(4) ~~[(5)]~~ The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(5) If a service or benefit is not listed in the global choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service for an individual in the global choices benefit plan.

Section 5. Optimum Choices Copayments and Coinsurance. (1) Following is a grid establishing optimum choices copayment and coinsurance amounts, except for individuals excluded pursuant to Section 6(1) of this administrative regulation, and corresponding provider reimbursement deductions:

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical antipsychotic drug if no generic equivalent for the atypical antipsychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed $20 per nonpreferred brand name drug prescription	Full amount of the coinsurance
Emergency room for a nonemergency visit	5% coinsurance	No deduction
Durable Medical Equipment	3% coinsurance up to a maximum of $15	The amount of the coinsurance or, if applicable, $15
Podiatry office visit	$2 copayment	Full amount of the copayment
Vision services, general ophthalmological services, and optometry services	**$2 copayment**	**Full amount of the copayment**

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the optimum choices benefit plan.

Section 6. Copayment, Coinsurance and Premium General Provisions and Exclusions. (1) The department shall impose no cost sharing for the following:

(a) A service furnished to an individual under eighteen (18) years of age required to be provided medical assistance under Social Security Act 1902(a)(10)(A)(i), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E, without regard to age;

(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income;

(c) A service furnished to a pregnant woman~~[, if the service relates to the pregnancy or to any other medical condition which may complicate the pregnancy]~~;

(d) A service furnished to a terminally ill individual who is receiving hospice care as defined in Social Security Act 1905(o);

(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

(f) An emergency service as defined by 42 C.F.R. 447.53;

(g) A family planning service or supply as described in Social Security Act 1905(a)(4)(C); or

(h) A service furnished to a woman who is receiving medical assistance via the application of Social Security Act 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

(2) The department has determined that any individual liable for a copayment, coinsurance amount or premium shall:

(a) Be able to pay a required copayment, coinsurance amount or premium; and

(b) Be responsible for a required copayment, coinsurance or premium.

(3) A provider shall not waive a copayment, coinsurance amount or premium obligation as imposed by the department for a recipient.

(4) 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 or coinsurance amount for a recipient.

(5) A parent or guardian shall be responsible for a copayment, coinsurance amount or premium imposed on a dependent child under the age of twenty-one (21).

(6) Provisions regarding a provider's ability to deny a service or benefit based on a recipient's failure to make a required copayment or coinsurance payment shall be as established in KRS 205.6312(4) and HB 380 of the 2006 GA and in accordance with Pub L. 109-171.

(7) A provider:

(a) Shall collect from a recipient a copayment, coinsurance amount, or premium as imposed by the department for a recipient in accordance with this administrative regulation;

(b) Not waive a copayment, coinsurance amount, or premium obligation as imposed by the department for a recipient; and

(c) May collect a copayment, coinsurance amount or premium at the time a benefit is provided or at a later date.

(8) 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.

(9) A monthly premium for a family who receives benefits under 42 U S C. 1396r-6(b) shall not exceed three (3) percent of:

(a) The family's average gross monthly income; or

(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(10) The department shall not increase its reimbursement to a provider to offset an uncollected copayment, coinsurance amount or premium from a recipient.

~~[(11) The copayment and coinsurance provisions established in this administrative regulation shall supersede any copayment or coinsurance provision in any other department administrative regulation if any contradiction exists.]~~ ~~[Prescription Drug Copayments.~~

~~(1) Except as excluded in Section 4 of this administrative regulation, the department shall require a prescription drug copayment from a Medicaid recipient in a mandatory eligibility group as follows:~~

~~(a) One (1) dollar for a generic drug prescription and the department shall reduce the provider's reimbursement by one (1) dollar;~~

~~(b) One (1) dollar for an atypical anti-psychotic drug prescription if the atypical anti-psychotic drug has no generic equivalent.~~

~~The department shall reduce the provider's reimbursement by one (1) dollar;~~

~~(c) Two (2) dollars for a brand name drug prescription if the brand name drug has no generic equivalent and the brand name drug is available under the supplemental rebate program. The department shall reduce the provider's reimbursement by one (1) dollar;~~

~~(d) Three (3) dollars for a nonpreferred brand name drug prescription and the department shall reduce the provider's reimbursement by one (1) dollar.~~

~~(2) Except as excluded in Section 4 of this administrative regulation, the department shall require a prescription drug copayment from a Medicaid recipient in an optional eligibility group as follows:~~

~~(a) Three (3) dollars for a generic drug prescription and the department shall reduce the provider's reimbursement by three (3) dollars;~~

~~(b) Three (3) dollars for an atypical anti-psychotic drug prescription if the atypical anti-psychotic drug has no generic equivalent. The department shall reduce the provider's reimbursement by three (3) dollars;~~

~~(c) Ten (10) dollars for a brand name drug prescription if the brand name drug has no generic equivalent and the brand name drug is available under the supplemental rebate program. The department shall reduce the provider's reimbursement by ten (10) dollars;~~

~~(d) Twenty (20) dollars for a nonpreferred brand name drug prescription and the department shall reduce the provider's reimbursement by twenty (20) dollars.~~

~~Section 3. Service Copayments. Except as excluded in Section 4 of this administrative regulation, the department shall require a service copayment from a Medicaid recipient as follows:~~

~~(1) Two (2) dollars per recipient per visit for a visit to a physician office, advanced registered nurse practitioner office, physician assistant office, rural health clinic, primary care center or federally qualified health center regardless of the type of provider that provides a service during the visit. The department shall not reduce the provider's reimbursement by the amount of the copayment;~~

~~(2)(a) Two (2) dollars per recipient per visit to any of the following types of providers:~~

~~1. An audiologist;~~

~~2. A chiropractor;~~

~~3. A dentist;~~

~~4. A hearing aid dealer;~~

~~5. An optician;~~

~~6. A podiatrist;~~

~~7. A general ophthalmologist, or~~

~~8. An optometrist for a general ophthalmological service; and~~

~~(b) The department shall reduce the provider's reimbursement by two (2) dollars for each visit or service identified in paragraph (a) of this subsection;~~

~~(3) Three (3) dollars per recipient per provider per date of service for a visit to an outpatient hospital, excluding a visit for treatment of an emergency condition. The department shall reduce the provider's reimbursement by three (3) dollars;~~

~~(4) Three (3) dollars per recipient per visit to an inpatient hospital or outpatient hospital for treatment of a nonemergency condition. The department shall not reduce the provider's reimbursement by three (3) dollars; and~~

~~(5) Fifty (50) dollars per recipient for an inpatient hospital admission including a direct admission as well as any admission resulting from a transfer.~~

~~(a) The copayment shall be due to the admitting hospital.~~

~~(b) The department shall reduce the provider's reimbursement by fifty (50) dollars.~~

~~Section 4. Copayment Exclusions and Limits and Recipient and Provider Responsibilities.~~

~~(1) The following annual copayment limits, based on a calendar year, shall apply:~~

~~(a) A recipient shall not be liable for more than $225 in prescription drug copayments per calendar year; and~~

~~(b) A recipient shall not be liable for more than $225 in service copayments per calendar year.~~

~~(2) The following shall not be subject to copayments:~~

~~(a) Exclusions established in KRS 205.6312, 42 C.F.R. 447.53 or 457.535;~~

~~(b) A service provided to a recipient who has reached his or her 18th birthday but has not turned nineteen (19); or~~

~~(c) A service provided to a recipient residing in a long-term care facility.~~

~~(3) An individual receiving services via any of the department's home and community based waiver service programs shall:~~

~~(a) Be subject to prescription drug copayments; and~~

~~(b) Not be subject to service copayments.]~~

~~(4) Unless excluded in subsection (2) or (3) 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.~~

~~(5) The department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.~~

~~(6) 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.~~

~~(7) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of:~~

~~(a) The family's average gross monthly income; or~~

~~(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.~~

~~Section 5. Provisions for Collection of Copayments.~~

~~(1) A provider shall collect a copayment from a recipient in accordance with Sections 2, 3, and 4 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 7. [6.] Premiums for KCHIP Children - Separate CHIP [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 8. [7.] Premiums for Transitional Medical Assistance Recipients. (1) 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, shall 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 9. [8.] Notices and Collection of Premiums. (1) Premiums shall be collected in accordance with Sections 7 and 8 [6 and 7] of this administrative regulation.

(2) The department shall give advance written 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 10 [9.] Provisions for Recipients in Medicaid-Managed Care. (1) A managed care entity:

(a) Shall not impose, on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705, a copayment, coinsurance or premium that exceeds a copayment, coinsurance or premium established in this administrative regulation; and

(b) May impose upon a recipient referenced in paragraph (a) of this subsection:

1. A lower copayment, coinsurance or premium than established in this administrative regulation; or

2. No copayment, coinsurance or premium [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 7 and 8 [6 and 7] 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 7 [6] of this administrative regulation.

Section 11. [10.] 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 12. [11.] Notice of Discontinuance, Hearings, and Appeal Rights.

(1) The department shall give written 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 7 or 8 [6 or 7] 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 7(4)(a) or 8(2) [6(4)(a) or 7(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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cost-sharing provisions for Medicaid and Kentucky Children's Health Insurance Program (KCHIP) recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cost-sharing provisions for Medicaid and KCHIP recipients.

(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) and Pub.L. 109-171 (aka the Deficit Reduction Act of 2005) by establishing cost-sharing provisions regarding Medicaid and KCHIP recipients.

(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 cost-sharing provisions related to Medicaid and KCHIP recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment is being promulgated to structure Department for Medicaid Services (DMS) cost-sharing in accordance with the Medicaid transformation known as KyHealth Choices. A companion regulation, 907 KAR 1:900E (KyHealth Choices Benefit Packages), will re-design the Kentucky Medicaid program into one tailored to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with the Deficit Reduction Act of 2005, is necessary to maintain the viability of the program, to provide innovative opportunities to Medicaid and KCHIP beneficiaries, and to promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth. The amended after comments regulation removes "occupational therapy" and its corresponding copayment from the Global Choices grid, because occupational therapy will not be a covered service at this time unless it is covered under adult day care for individuals participating in the Home and Community Based Waiver program, or covered under physician services in a situation where the occupational

therapist is employed as a full time employee of the physician and the procedure is billed under the physician's provider number. The amended after comments regulation further clarifies that the 5% coinsurance fee for non-preferred brand name drugs will not exceed $20 per prescription. Additionally, the amended after comments regulation inserts vision cost-sharing provisions inadvertently admitted previously, denotes that the non-emergency coinsurance will not be deducted from the provider's reimbursement, refers to 907 KAR 1:900 benefit plan definitions to ensure uniformity as well as deletes definitions related to benefit plans.

(b) The necessity of the amendment to this administrative regulation: The amendment and amended after comments regulation is necessary to assist in transforming the Medicaid program in conjunction with a related administration regulation - 907 KAR 1:900E (KyHealth Choices Benefit Packages). This action is necessary to maintain the viability of the Medicaid program and to transform it into a program tailored to beneficiaries' needs. The transformed program provides innovative opportunities to Medicaid and KCHIP beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment and amended after comments regulation conforms to the content of the authorizing statutes, including KRS 205 6312 and Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), by assisting in transforming the Medicaid program to maintain its viability and to transform it into a program tailored to beneficiaries' needs. The transformed program provides innovative opportunities to Medicaid and KCHIP beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes. The amendment and amended after comments regulation conforms to the content of the authorizing statutes, including KRS 205 6312 and Pub.L. 109-171 (aka the Deficit Reduction Act of 2005) by assisting in transforming the Medicaid program to maintain its viability and to tailor it to beneficiaries' needs. The transformed program provides innovative opportunities to Medicaid and KCHIP beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment and amended after comments regulation will affect all Medicaid and KCHIP program recipients who are not exempt from co-payment or co-insurance fees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All recipients who are not exempt from copayment or coinsurance fees will be responsible for complying with the cost-sharing provisions established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Those recipients who are not exempt from cost sharing charges will pay no more than $225 per year for prescription drug co-payments and no more than $225 for medical services In addition, state rules provide that the maximum amount of cost sharing shall not exceed 5% of a family's income per quarter. The Medicaid Management Information System will track copayments to ensure that they are correctly applied, and providers may check the department's automated voice response system at 1-800-807-1301 or KyHealth Net to see whether a member is exempt from co-payments or has reached the cap on out of pocket expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The transformed program, known as KyHealth Choices, provides innovative opportunities that will promote healthy lifestyles and personal accountability among Medicaid and KCHIP recipients.

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

(a) Initially: DMS anticipates that this amendment and amended after comments regulation will generate a savings of approximately $31.1 million ($21.1 million federal funds; $10.0 million state funds) during State Fiscal Year (SFY) 2007.

(b) On a continuing basis: DMS anticipates that this amendment and amended after comments regulation will generate a similar but higher level of annual savings in subsequent years.

(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: A funding increase is unnecessary; however, an increase in certain designated cost-sharing amounts or imposition of new cost-sharing requirements 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 increases and imposes certain designated cost-sharing requirements.

(9) Tiering: Is tiering applied? This administrative regulation includes tiering in order to tailor the cost-sharing provisions to individual medical needs and circumstances and to assist in transforming the Medicaid program in conjunction with a related administration regulation - 907 KAR 1 900 (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and KCHIP beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all Medicaid and KCHIP program recipients who are not exempt from co-payment or co-insurance fees.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. Additionally, this administrative regulation and amended after comments regulation comply Pub.L. 109-171, governing the Medicaid program, and KRS 205.6312(5) by establishing cost-sharing provisions for 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. Also, this administrative regulation and amended after comments regulation comply 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school distncts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school distncts) for subsequent years? This amendment will not generate any additional revenue for state or

local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year; however, DMS anticipates that this amendment and amended after comments regulation will generate a savings of approximately $31.1 million ($21.1 million federal funds; $10.0 million state funds) during State Fiscal Year (SFY) 2007.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years of implementation; however, DMS anticipates that this amendment and amended after comments regulation will generate a similar but higher level of annual savings in subsequent years.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-). ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(Amended After Comments)

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.100, 447.200-205, 42 U.S.C. 1396a-d

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 the responsibility to administer the Medicaid Program. KRS 205 520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining the amount payable by the cabinet for a dental service.

Section 1. Definitions. (1) "Comprehensive orthodontic procedure" means a medically-necessary dental service for a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure for removing thick or dense deposits on the teeth which is required when tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, and gum disease. A debridement is not the same as a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque and or calculus.

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

(5) "Disabling malocclusion" means that a patient:

(a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;

(b) Has a true anterior open bite that does not include:

1. One (1) or two (2) teeth slightly out of occlusion; or

2. Where the incisors have not fully erupted;

(c) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal),

(d) Has an anterior crossbite that involves:

1. More than two (2) teeth in crossbite;

2. Obvious gingival stripping; or

3. Recession related to the crossbite;

(e) Demonstrates handicapping posterior transverse discrepancies which may include several teeth, one (1) of which shall be a molar and is handicapping in a function fashion as follows:

1. Functional shift;

2. Facial asymmetry;

3. Complete buccal or lingual crossbite; or

4. Speech concern;

(f) Has a significant posterior open bite that does not involve:

1. Partially erupted teeth; or

2. One (1) or two (2) teeth slightly out of occlusion;

(g) Except for third molars, has impacted teeth that will not erupt into the arches without orthodontic or surgical intervention;

(h) Has extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal conditions specified in paragraphs (a) through (g) of this subsection;

(i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures, and does not include simple loss of teeth with no other affects;

(j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

(k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; or

(l) Has developmental anodontia in with several congenitally missing teeth resulting in a handicapping malocclusion or arch deformation.

(6) [~~(4)~~] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional practitioner resources; or

(b) Is clinically integral to the performance of the primary procedure.

(7) [~~(5)~~] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(8) [~~(6)~~] "Manually priced" or "MP" means that a procedure is priced according to complexity.

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

(10) [~~(8)~~] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one 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 CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(11) [~~(9)~~] "Prepayment review" or "PPR" means a departmental review process of a claim to determine if the requirements established in 907 KAR 1.026 have been met prior to authorizing payment.

(12) [~~(10)~~] "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(13) [~~(11)~~] "Provider" is defined in KRS 205.8451(7).

(14) [~~(12)~~] "Recipient" is defined in KRS 205.8451(9).

(15) [~~(13)~~] "Timely filing" means receipt of a claim by Medicaid

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(16) [~~(14)~~] "Usual and customary charge" means the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be the lesser of the:

(a) Dentist's usual and customary charge;

(b) Reimbursement limits specified in Sections 3 and 4 of this

administrative regulation;

(c) A manually priced amount; or

(d) A prior authorized fee.

(2) If a rate has not been established for a covered dental service, the department shall set an upper limit for the procedure by:

(a) Averaging the reimbursement rates assigned to the service by three (3) other payer or provider sources; and

(b) Comparing the calculated average obtained from these three (3) rates to rates of similar procedures paid by the department.

(3) If cost sharing is required, the cost sharing shall be in accordance with 907 KAR 1:604 [~~, if a copayment is required, reimbursement shall be reduced by the amount of the copayment~~].

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) A service which is not billed within timely filing requirements shall not be reimbursed.

(6) 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.

Section 3. Reimbursement Rates for Dental Services. (1) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient under twenty-one (21) years of age:

Kentucky Medicaid Dental Services		
Description	Upper Limit	Authorization Requirement
Diagnostic Procedures		
Limited oral evaluation (trauma related injuries only)	$33	PPR required
Comprehensive oral evaluation	$26	
Intraoral complete series	$63 70	
Intraoral periapical, first film	$10 40	
Intraoral periapical, each additional film	$7 80	
Bitewing, single film	$9 10	
Bitewing, 2 films	$18 20	
Bitewing, 4 films	$29 90	
Panoramic film	$39	PA required for ages 5 and under
Cephalometric film	$61.10	
Preventative Procedures		
Prophylaxis, 14 - 20	$48 10	
Prophylaxis, 13 and under	$48 10	
[~~Topical fluoride with prophylaxis~~]	[~~$48 10~~]	
Sealant per tooth (ages 5-20)	$19 50	
Space maintainer, fixed unilateral	$135 20	
Space maintainer, fixed bilateral	$262 60	
Space maintainer, removable unilateral	$134	
Space maintainer, removable bilateral	$202	
Restorative Procedures		
Amalgam, 1 surface	$49 40	
Amalgam, 2 surfaces	$65 00	
Amalgam, 3 surfaces	$76 70	
Amalgam, 4 or more surfaces	$93 60	
Resin, 1 surface, anterior	$57 20	
Resin, 2 surfaces, anterior	$71 50	
Resin, 3 surfaces, anterior	$85 80	
Resin, 4 or more surfaces, anterior	$101.40	
Resin, 1 surface, posterior	$57.20	
Resin, 2 surfaces, posterior	$71 50	
Resin, 3 surfaces, posterior	$85 80	
Resin, 4 or more surfaces, posterior	$101.40	
Prefab stainless steel crown primary	$119 60	
Prefab stainless steel crown permanent	$133 90	
Prefab resin crown	$113.10	
Pin retention, per tooth, in add to restoration	$13	
Endodontic Procedures		
Pulp cap direct	$17	
Therapeutic pulpotomy	$67 60	
Root canal therapy anterior	$274 30	
Root canal therapy bicuspid	$344 50	
Root canal therapy molar	$481	
Apicoectomy anterior	$201.50	
Apicoectomy, bicuspid first root	$201.50	
Apicoectomy, molar first root	$201 50	
Replace missing or broken tooth on denture	$40.30	
[~~Apicoectomy-root surgery-molar~~]	[~~$201 50~~]	
Apicoectomy, per tooth each additional root	$197	
Periodontic Procedures		
Gingivectomy, gingivoplasty per quadrant	$336.70	PPR required
Gingivectomy, gingivoplasty per tooth	$135 20	PPR required
Periodontal scaling and root planing per quadrant	$101 40	PA required
Full mouth debridement	$68.50	Pregnant women only
Removable Prosthodontic Procedures		
Repair resin denture base	$61.10	
Repair cast framework	$97.50	
Replace broken teeth, per tooth	$36 40	
Reline complete maxillary denture	$128 70	
Reline complete mandibular denture	$128 70	
Interim partial upper	$319 80	
Interim partial lower	$336 70	
Maxillofacial Prosthetic Procedures		
Nasal prosthesis	$2,036	
Auricular prosthesis	$1,881	
Facial prosthesis	$3,408	
Obturator (temporary)	$1121 90	
Obturator (permanent)	$1,992	
Mandibular resection prosthesis	$1,660	
Speech aid-pediatric (13 and under)	$2,036	
Speech aid (14 - 20)	$2,036	
Palatal augmentation prosthesis	$1,550	
Palatal lift prosthesis	$1,836	
Oral surgical splint	$896	
Unspecified maxillofacial prosthetic procedure	MP	PPR required
Oral and Maxillofacial Surgery Procedures		
Extraction, deciduous tooth	$49 40	
Extraction, erupted tooth or exposed root	$49 40	
Surgical removal of erupted tooth	$93 60	
[~~Surgical removal of impacted tooth with mucoper flap~~]	[~~$93 60~~]	
Removal of impacted tooth (soft tissue)	$127.40	
Removal of impacted tooth (par-	$179 40	

tially bony)		
Removal of impacted tooth (completely bony)	$215 80	
Removal of impacted tooth (comp bony or unusual)	$222 30	
Surgical access of an unerupted tooth	MP	PPR required
Surgical removal of residual tooth roots	$107.90	
Oroantral fistula closure	$135 20	
Alveoplasty in conjunction with extraction per quadrant	$101.40	
Alveoplasty not in conjunction with extraction per quadrant	$101.40	
Excision of benign lesion	$87.10	
Incision and drainage of abscess (intraoral)	$67 60	
Incision and drainage of abscess (extraoral)	$80 60	
Removal of foreign body	$201.50	
Temporomandibular splint therapy	$424	PA required
Suture of recent small wound	$67.60	
Frenulectomy	$167.60	
Orthodontic Procedures		
Removable appliance therapy	$362	PA required
Fixed appliance therapy	$259	PA required
Preorthodontic exam and treatment plan	PA Fee	PA required
Orthodontic treatment	PA Fee	PA required
Unspecified orthodontic procedure-final 1/3	PA Fee	PA required
Adjunctive General Services		
Palliative treatment of dental oral pain	$27.30	
Intravenous sedation	$158 60	
Hospital call	$67 60	

(2) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient twenty-one (21) years of age and older[~~be applicable~~]:

Kentucky Medicaid Dental Services		
Description	Upper Limit	Authorization Requirement
Diagnostic Procedures		
Limited oral evaluation (trauma related injuries only)	$33	PPR required
Comprehensive oral evaluation	$26	
Intraoral complete series	$49	
Intraoral periapical, first film	$8	
Intraoral periapical, each additional film	$6	
Bitewing, single film	$7	
Bitewing, 2 films	$14	
Bitewing, 4 films	$23	
Panoramic film	$39	[~~PA required for ages 5 and under~~]
Cephalometric film	$47	
Preventative Procedures		
Prophylaxis[~~, 14 and over~~]	$37	
[~~Prophylaxis, 13 and under~~	~~$37~~	
~~Sealant per tooth (ages 5-20)~~	~~$15~~	
~~Space maintainer, fixed unilateral~~	~~$104~~	
~~Space maintainer, fixed bilateral~~	~~$202~~	
~~Space maintainer, removable unilateral~~	~~$134~~	
~~Space maintainer, removable bilateral~~	~~$202~~]	
Restorative Procedures		
Amalgam, 1 surface	$38	
Amalgam, 2 surfaces	$50	
Amalgam, 3 surfaces	$59	
Amalgam, 4 or more surfaces	$72	
Resin, 1 surface, anterior	$44	
Resin, 2 surfaces, anterior	$55	
Resin, 3 surfaces, anterior	$66	
Resin, 4 or more surfaces, anterior	$78	
Resin, 1 surface, posterior	$44	
Resin, 2 surfaces, posterior	$55	
Resin, 3 surfaces, posterior	$66	
Resin, 4 or more surfaces, posterior	$78	
[~~Prefab stainless steel crown primary~~	~~$92~~	
~~Prefab stainless steel crown permanent~~	~~$103~~	
~~Prefab resin crown~~	~~$87~~]	
Pin retention, per tooth, in add. to restoration	$13	
Endodontic Procedures		
[~~Pulp cap direct~~]	[~~$17~~]	
[~~Therapeutic pulpotomy~~]	[$52]	
[~~Root canal therapy anterior~~]	[~~$211~~]	
[~~Root canal therapy bicuspid~~]	[~~$265~~]	
[~~Root canal therapy molar~~]	[~~$370~~]	
Apicoectomy anterior	$155	
Apicoectomy, bicuspid first root	$155	
Apicoectomy, molar first root	$155	
Apicoectomy, per tooth each additional root	$197	
Periodontic Procedures		
Full mouth debridement	$68.50	Pregnant women only
Gingivectomy, gingivoplasty per quadrant	$259	PPR required
Gingivectomy, gingivoplasty per tooth	$104	PPR required
Periodontal scaling and root planing per quadrant	$78	PA required
Removable Prosthodontic Procedures		
[~~Replace missing or broken teeth on denture~~]	~~$31~~]	
[~~Repair resin denture base~~]	~~$47~~]	
[~~Repair cast framework~~]	~~$75~~]	
[~~Replace broken tooth, per tooth~~]	~~$28~~]	
[~~Reline complete maxillary denture~~]	~~$99~~]	
[~~Reline complete mandibular denture~~]	~~$99~~]	
[~~Interim partial upper~~]	~~$246~~]	
[~~Interim partial lower~~]	~~$259~~]	
Maxillofacial Prosthetic Procedures		
Nasal prosthesis	$2,036	
Auricular prosthesis	$1,881	
Facial prosthesis	$3,408	
Obturator (temporary)	$863	
Obturator (permanent)	$1,992	
Mandibular resection prosthesis	$1,660	
[~~Speech aid pediatric (13 and under)~~]	[~~$2,036~~]	
Speech aid[~~, adult (14 and over)~~]	$2,036	
Palatal augmentation prosthesis	$1,550	
Palatal lift prosthesis	$1,836	

Oral surgical splint	$896	
Unspecified maxillofacial prosthetic procedure	MP	PPR required
Oral and Maxillofacial Surgery Procedures		
Extraction, deciduous tooth	$38	
Extraction, erupted tooth or exposed root	$38	
Surgical removal of erupted tooth	$72	
Removal of impacted tooth (soft tissue)	$98	
Removal of impacted tooth (partially bony)	$138	
Removal of impacted tooth (completely bony)	$166	
Removal of impacted tooth (comp. bony or unusual)	$171	
Surgical access of an unerupted tooth	MP	PPR required
Surgical removal of residual tooth roots	$83	
Oroantral fistula closure	$104	
Alveoplasty in conjunction with extraction per quadrant	$78	
Alveoplasty not in conjunction with extraction per quadrant	$78	
Excision of benign lesion	$67	
Incision and drainage of abscess (intraoral)	$52	
Incision and drainage of abscess (extraoral)	$62	
Removal of foreign body	$155	
[~~Temporomandibular splint therapy~~]	[$424]	[~~PA required~~]
Suture of recent small wound	$52	
Frenulectomy	$129	
[~~Orthodontic Procedures~~		
[~~Removable appliance therapy~~]	[$362]	[~~PA required~~]
[~~Fixed appliance therapy~~]	[$259]	[~~PA required~~]
[~~Preorthodontic exam and treatment plan~~]	[~~PA Fee~~]	[~~PA required~~]
[~~Orthodontic treatment~~]	[~~PA Fee~~]	[~~PA required~~]
[~~Unspecified orthodontic procedure final 1/3~~]	[~~PA Fee~~]	[~~PA required~~]
Adjunctive General Services		
Palliative treatment of dental oral pain	$21	
[~~Intravenous sedation~~]	[~~$122~~]	
Hospital call	$52	

(3) [~~(2)~~] A comprehensive orthodontic procedure shall be reimbursed as follows:

(a) Except as specified in paragraph (b) of this subsection, an orthodontic consultation, including examination and development of a treatment plan, $112;

(b) The Medicaid reimbursement rate for an orthodontic consultation shall not exceed fifty-six (56) dollars if.

1. The provider determines that comprehensive orthodontic treatment services are not needed;

2. The provider is unable or unwilling to provide the needed orthodontic treatment services; or

3. Prior authorization for comprehensive orthodontic services is not approved by the department or is not requested by the provider;

(c) A service for an early phase of moderately severe or severe disabling malocclusion:

1. $1,367 for an orthodontist; or

2. $1,234 for a general dentist;

(d) A service for a moderately severe disabling malocclusion:

1. $1,825 for an orthodontist; or

2. $1,659 for a general dentist; or

(e) A service for a severe disabling malocclusion:

1. $3,000 total [~~$2,754~~] for an orthodontist; or

2. $2,674 total [~~$2,456~~] for a general dentist.

(4) [~~(3)~~] Reimbursement for comprehensive orthodontic treatment shall consist of two (2) payments:

(a) The first payment shall be two-thirds (2/3) of the prior authorized payment amount;

(b) The second payment shall:

1. Be one-third (1/3) of the prior authorized payment amount; and

2. Not be billed until six (6) monthly visits are completed following the banding date; and

(c) The two (2) payments shall be inclusive of all services associated with the comprehensive orthodontic treatment.

Section 4. Oral Surgeons. Except for a service specified in 907 KAR 1:026, Section 12(8), a service provided by an oral surgeon shall be reimbursed in accordance with 907 KAR 3.010.

Section 5. Supplemental Payments.

(1) In addition to a payment made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a dental school faculty dentist who is employed by a state-supported school of dentistry in Kentucky.

(2) The supplemental payment shall be:

(a) In an amount which when combined with other payments made in accordance with this administrative regulation, does not exceed the dentist's charge for a service he has provided:

1. As a dental school faculty; and

2. For which the payment is made directly or indirectly to the dental school,

(b) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of dentistry in Kentucky; and

(c) Made on a quarterly basis.

Section 6. Appeal Rights. 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement criteria for services provided by dentists to Medicaid recipients.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement criteria for payment of medically-necessary dental services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative

regulation: This amendment is being promulgated as a companion to 907 KAR 1:026E, Dental services. 907 KAR 1:026E enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E, Kentucky Health Choices Benefit Packages. This administrative regulation increases reimbursement for dental services to individuals under 21 years of age, increases reimbursement for a disabling malocclusion, and establishes reimbursement (in conjunction with 907 KAR 1:026) for a full mouth debridement for pregnant women. The necessity of the amendment to this administrative regulation: The amendments are necessary in conjunction with a companion administrative regulation; 907 KAR 1:026, Dental services; which is a component of the Medicaid transformation known as Kentucky Health Choices. The amendments are necessary to promote dental coverage access for individuals under 21 years of age as well as to enhance coverage for pregnant women.

(b) How the amendment conforms to the content of the authorizing statutes: The amendments promote dental coverage access for individuals under 21 years of age as well as to enhance coverage for pregnant women in accordance with authorizing statutes.

(c) How the amendment will assist in the effective administration of the statutes: The amendments promote dental coverage access for individuals under 21 years of age as well as to enhance coverage for pregnant women in accordance with authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all Medicaid Program dental providers, recipients under 21 years of age and pregnant women receiving dental 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: Dental reimbursement rates will increase for services provided to individuals under 21 years of age, dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure, and providers will receive a higher reimbursement for a disabling malocclusion service.

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

(a) Initially: This amendment is being implemented in conjunction with a companion administrative regulation; 907 KAR 1:026E, Dental services; which the Department for Medicaid Services (DMS) estimates could save approximately $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually.

(b) On a continuing basis: This amendment is being implemented in conjunction with a companion administrative regulation; 907 KAR 1:026E, Dental services; which the Department for Medicaid Services (DMS) estimates could save approximately $12.4 million ($8.47 million federal funds; $3 93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually.

(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 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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment and amended after comments regulation will affect dental providers enrolled in the Medicaid program. This amendment will also affect the Medicaid program administered by the Cabinet for Health and Family Services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Because this amendment and amended after comments regulation is being promulgated as a companion to 907 KAR 1.026E (Dental Services), which enables the Department for Medicaid Services to establish limitations on dental services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages), this amendment is authorized by the Deficit Reduction Act of 2005 (Pub.L. 109-171).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation. However, dental reimbursement rates will increase for services provided to individuals under 21 years of age. Dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure and providers will receive a higher reimbursement for a disabling malocclusion service.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation. However, dental reimbursement rates will increase for services provided to individuals under 21 years of age. Dental providers who perform a full mouth debridement on pregnant women will now be reimbursed for the procedure and providers will receive a higher reimbursement for a disabling malocclusion service.

(c) How much will it cost to administer this program for the first year? This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1.026E – Dental Services), which the DMS estimates could save approximately a potential maximum of $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually.

(d) How much will it cost to administer this program for subsequent years? This amendment is being implemented in conjunction with a companion administrative regulation (907 KAR 1:026E – Dental Services), which the DMS estimates could save approximately a potential maximum of $12.4 million ($8.47 million federal funds; $3.93 million state funds) annually; however, DMS anticipates that the reimbursement increases implemented in this administrative regulation could cost approximately $8.1 million ($5.5 million federal funds; $2.6 million state funds) annually.

Note: 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 Health and Family Services
Division of Administration and Financial Management
(Amended After Comments)

907 KAR 1:900. KyHealth Choices benefit plans [Packages].

RELATES TO: KRS 205 520, 205.560, 205 6312, 205.6481-6497, 205.8451, 319A.010, 327.010, 334A.020, 20 C.F.R. 416 2001, 42 C.F.R. 433.56, 435, 436.3, 440.30, 440.40, 440.60, 440.70, 440.110, 440.120, 440.130, 440.170, 441 20, 441.21, 441.35, 441.40, 457.310, 45 C.F.R. 233.100, 42 U S C. 416, 423, 1382c, 1383c, 1396a, b, c, d, o, r-6, r-8, 1397aa, Social Security Act 1902(a)(10)(A), 1902(a)(52), 1902(aa), 1902(l)(B),(C),(D), 1905(a), 1905(a)(4)(C), 1905(o), 1931, 2006 GA HB 380

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), Pub.L. 109-171

NECESSITY, FUNCTION, AND CONFORMITY: 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, as authorized by KRS 194A.030(2), 194A.050(1), 205.520(3) and Pub.L. 109-171, establishes the Medicaid Program KyHealth Choices benefit plans [packages].

Section 1. Definitions. (1) "ABI waiver" means the department's Acquired Brain Injury Waiver Program.

(2) "Benchmark plan" means the global choices.

(3) "Benefit plan" means the health plan provided to recipients under comprehensive choices, family choices, global choices, and optimum choices.

(4) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and

(b) Who is seeking to qualify as a kinship caregiver.

(5) [(3)] "Categorically needy children" means individuals under eighteen (18) years of age receiving Title IV-E benefits, SSI, or SSP, or who would have been eligible to receive Title IV-A benefits prior to July 16, 1996.

(6) [(4)] "CHIP" means children's health insurance program.

(7) [(5) "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.

(6)] "Comprehensive choices" means a benefit plan [package] for individuals who meet the nursing facility patient status criteria established in 907 KAR 1 022, receive services through either a nursing facility in accordance with 907 KAR 1:022, the Acquired Brain Injury Waiver Program in accordance with 907 KAR 3 090, the Home and Community Based Waiver Program in accordance with 907 KAR 1:160 or the Model Waiver II Program in accordance with 907 KAR 1:595 and consists of individuals designated with a package code of F, G, H, I, J, K, L, M, O, P, or Q.

[(7) "Copayment" or "copay" means a dollar amount portion of the cost of a Medicaid benefit that a recipient is required to pay.]

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

(9) "Family choices" means a benefit plan [package] for individuals covered pursuant to: Section 1902(a)(10)(A)(i)(I) and 1931 of the Social Security Act, Section 1902(a)(52) and 1925 of the Social Security Act (excluding children eligible under Part A or E of title IV), Section 1902 (a)(10)(A)(i)(IV) as described in 1902(l)(1)(B) of the Social Security Act, Section 1902(a)(10)(A)(i)(VI) as described in 1902 (l)(1)(C) of the Social Security Act, Section 1902 (a)(10)(A)(i)(VII) as described in 1902 (l)(1)(D) of the Social Security Act, and 42 C.F.R. 457.310 and consists of individuals designated with a package code of 2, 3, 4, or 5.

(10) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E [package] and shall be for the following populations:

(a) Caretaker relatives of children who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI:

1. But do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. And receive SSP but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI:

1. Who do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

2. And SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI:

1. Who do not meet nursing facility patient status criteria in accordance with 907 KAR 1·022, including children;

2. And SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022; [or]

(g) Disabled individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits, but do not meet nursing facility patient status in accordance with 907 KAR 1.022; or

(h) Pregnant women.

(11) "HCB waiver" means the department's Home and Community Based Waiver Program established in 907 KAR 1:160.

(12) "ICF MR DD" means an intermediate care facility for individuals with mental retardation or a developmental disability.

(13) "KCHIP" means Kentucky Children's Health Insurance Program.

(14) "KCHIP Children - Medicaid Expansion Program" means a department program established in 907 KAR 4.020.

(15) "KCHIP Children - Separate CHIP Program" means a department program established in 907 KAR 4·030.

(16) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the Cabinet for Health and Family Services as an alternative to foster care.

(17) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

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

(19)] "Model Waiver II" means a department program established in 907 KAR 1:595.

(19) [(20) "Nonemergency visit" means a visit to an emergency room for treatment of a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(21) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list pursuant to 907 KAR 1:019.

(22) "Occupational therapy" means the practice of occupational therapy pursuant to KRS 319A.010(2), as covered by the department, and provided by an occupational therapist as defined in KRS 319A.010(3).

(23)] "Optimum choices" means a benefit plan [package] for

individuals who meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022, who receive services through either an intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1.022, or who receive services through the Supports for Community Living Waiver Program in accordance with 907 KAR 1:145 and consists of individuals designated with a package code of R, S, T, U, V, W, X, Z, 0, or 1.

(20) "Package code" means a unique code which identifies a specific service under each benefit plan.

(21) [(24) "Other populations" means SSI individuals, caretaker relatives, and individuals eligible through the department's Breast and Cervical Cancer Treatment Program pursuant to 907 KAR 1:805 who are subject to copayment or coinsurance.

(25) "Physical therapy" means physical therapy as defined in KRS 327.010(1), as covered by the department, and provided by a physical therapist as defined in KRS 327.010(2) and as covered by the department.

(26) "Preferred brand name drug" means a brand name drug for which no generic equivalent exists and is available via the department's supplemental rebate program pursuant to 907 KAR 1:019.

(27)] "Recipient" is defined in KRS 205.8451 and applies to 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.

(22) [(28)] "SCL waiver" means the department's Supports for Community Living Waiver Program established in 907 KAR 1:145.

(23) [(29) "Speech therapy" means the practice of speech pathology as defined in KRS 334A.020(4), as covered by the department, and provided by a speech-language pathologist as defined in KRS 334A.020(3).

(30)] "SSI" means the Social Security Administration program called supplemental security income

(24) [(31)] "SSP" means state supplemental payments for individuals who are aged, blind or disabled and in accordance with 921 KAR 2:015.

Section 2. Benefit Plan [Package] Assignment. (1)(a) The department shall assign each recipient, including those excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B), to the appropriate benefit package - comprehensive choices, family choices, global choices, or optimum choices - pursuant to the definitions established in Section 1(6), (8), (9), [(10)] and (18) [(22)], and based on the recipient's medical needs or circumstances.

(b) An individual excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B):

1. May enroll in the benchmark plan; and

2. Shall be subject to the cost-sharing, service limit, and any other provisions established for the benchmark plan effective beginning with the date the individual requested to be enrolled in the benchmark plan.

(2)[(a) The provisions established in this administrative regulation shall apply to a recipient and, except for cost-sharing provisions, shall supersede any contradictory provision established in any other department administrative regulation if any contradiction exists.

(b) If any cost-sharing provision established in this administrative regulation differs from a cost-sharing provision established in 907 KAR 1:604, the cost-sharing provision established in 907 KAR 1:604 shall supersede the cost-sharing provision established in this administrative regulation.

(3)] If a recipient's medical needs or circumstances change, the department may assign the recipient to a more appropriate benefit plan [package].

(4)(a) A recipient whose medical needs or circumstances are appropriate for the comprehensive or optimum choices benefit plan [package] may elect to not be assigned to the comprehensive or optimum choices benefit plan [package].

(b) The department shall assign a recipient who elects to not be assigned to the comprehensive or optimum choices benefit plan [package] to the global choices benefit plan [package].

(5)(a) A recipient may request to be assigned to a different benefit plan [package] by notifying the department.

(b) If a recipient requests to be assigned to a different benefit plan [package], the department shall examine the recipient's medical needs or circumstances and determine if the individual shall be placed in a different benefit plan [package].

Section 3. Benefit Plan Covered Services and Cost Sharing. (1) Benefit plan covered service provisions shall be as established in the respective program administrative regulations located in Title 907 KAR.

(2) Benefit plan cost-sharing provisions shall be as established in 907 KAR 1:604.

Section 4. Appeals. A recipient may appeal a department decision in accordance with 907 KAR 1:563. [Comprehensive Choices. (1) Following is a grid establishing the comprehensive choices benefit package provisions:

Benefit	NF Level of Care (including ABI waiver, Model Waiver II, and HCB Waiver)
Medical Out-of-Pock Annual Nonpharmacy Benefit Cost-sharing Maximum	$225 per calendar year
Annual Pharmacy Benefit Cost-sharing Maximum	$225 per calendar year
Acute Inpatient Hospital Admission	$10 copay
Laboratory, Diagnostic and Radiology Services	$0 copay
Outpatient Hospital or Ambulatory Surgical Center	$3 copay
Physician Office Services	$0 copay
Behavioral Health Services	$0 copay
Allergy Services	$0 copay
Preventive Services	$0 copay
Emergency Ambulance	$0 copay
Dental Services Cleanings shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over; X-rays shall be limited to 1 set per 12 months regardless of age	$0 copay
Family Planning	$0 copay
Occupational Therapy (Limited to 30 visits per 12 months)	$0 copay
Physical Therapy (Limited to 30 visits per 12 months)	$0 copay
Speech Therapy (Limited to 30 visits per 12 months)	$0 copay
Hospice (noninstitutional)	$0 copay
Nonemergency Transportation	$0 copay
Chiropractic Services (Children under the age of 21 shall be limited to 7 visits per 12 months; Adults age 21 and over shall be limited to 15 visits per 12 months)	$0 copay
Prescription Drugs for Recipients who do not have Medicare Part D (Limited to 4 prescriptions per month with a maximum of 3 brand name prescriptions)	$1 copay for generic or atypical antipsychotic if no generic equivalent – for the atypical antipsychotic exists, $2 copay for preferred brand name drug, 5% coinsurance for nonpreferred brand name drug
Emergency Room	5% coinsurance for a nonemergency visit
Hearing Services (All hearing service coverage shall be limited to children under age 21)	$0 copay
Hearing Aids (Coverage shall be limited to children	$0 copay

under age 21 and to $1,400 per ear every 36 months)	
Audiometric Services (Coverage shall be limited to children under age 21 and to 1 audiologist visit per 12 months)	$0 copay
Vision Services (All vision service coverage shall be limited to children under age 21; Eyeglass coverage shall be limited to $400 per 12 months)	$0 copay
Prosthetic Devices	$0 copay
Home Health Services	$0 copay
Durable Medical Equipment	3% coinsurance up to a maximum of $15 per month
Early Periodic Screening and Diagnosis (EPSD)	$0 copay
Treatment (T) Services for Conditions Identified through EPSD (Coverage shall be limited to children under age 21)	$0 copay
Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to 907 KAR 3:110)	$0 copay
Maternity Services (Coverage shall include nurse mid-wife services, pregnancy-related services, services for other conditions that might complicate pregnancy or 60 days post-partum pregnancy-related services)	$0 copay
Podiatry Services	$2 copay
End Stage Renal Disease and Transplants	$0 copay

(2) Physician office services include services provided by physicians, certified pediatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.

(3) Behavioral health services include mental health rehabilitation or stabilization, behavioral support, psychological services and inpatient psychiatric services.

(4) To be covered by the department, an occupational therapy, physical therapy or speech therapy visit shall be prior authorized.

(5) Except for the hearing aid coverage monetary limit, the eyeglass coverage monetary limit, and any age limit, the limits established in this section of this administrative regulation shall be soft in that they may be over-ridden if the department determines that the additional benefit is medically necessary.

Section 4. Family Choices. (1) Following is a grid establishing the family choices benefit package provisions:

Benefit	Children of Caretaker Relatives	Categorically Needy Children	KCHIP Children Medicaid Expansion Program	KCHIP Children Separate CHIP Program
Annual Nonpharmacy Benefit Cost-sharing Maximum	$225 per calendar year	$225 per calendar year	$225 per calendar year	$225 per calendar year
Annual Pharmacy Benefit Cost-sharing Maximum	$225 per calendar year	$225 per calendar year	$225 per calendar year	$225 per calendar year
Acute Inpatient Hospital Services	$0 copay	$0 copay	$0 copay	$0 copay
Laboratory, Diagnostic and Radiology Services	$0 copay	$0 copay	$0 copay	$0 copay
Outpatient Hospital or Ambulatory Surgical Center Services	$0 copay	$0 copay	$0 copay	$0 copay
Physician Office Services	$0 copay	$0 copay	$0 copay	$0 copay
Behavioral Health Services	$0 copay	$0 copay	$0 copay	$0 copay
Allergy Services	$0 copay	$0 copay	$2 copay for office visit and testing; $0 copay for injections	$2 copay for office visit and testing; $0 copay for injections
Preventive Services	$0 copay	$0 copay	$0 copay	$0 copay
Emergency Ambulance	$0 copay	$0 copay	$0 copay	$0 copay
Dental Services (Cleanings shall be limited to 2 per 12 months; X-rays shall be limited to 1 set per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Family Planning	$0 copay	$0 copay	$0 copay	$0 copay
Occupational Therapy (Limited to 15 visits per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Physical Therapy (Limited to visits per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Speech Therapy (Limited to 15 visits per 12 months	$0 copay	$0 copay	$0 copay	$0 copay
Hospice (noninstitutional)	$0 copay	$0 copay	$0 copay	$0 copay

Nonemergency transportation (Not Covered for KCHIP Children - Separate CHIP Program)	$0 copay	$0 copay	$0 copay	Not Covered
Chiropractic Services (Limited to 7 visits per 12 months	$0 copay	$0 copay	$0 copay	$0 copay
Prescription Drugs	$0 copay	$0 copay	$1 copay for generic or atypical anti-psychotic if no generic equivalent for the atypical anti-psychotic exists; $2 copay for preferred brand name drug; $3 for nonpreferred brand name drug	$1 copay for generic or atypical antipsychotic if no generic equivalent for the atypical anti-psychotic exists; $2 copay for preferred brand name drug; $3 for nonpreferred brand name drug
Emergency Room	$0 copay	$0 copay	5% coinsurance for a nonemergency visit	5% coinsurance for a nonemergency visit
Hearing Aids ($1,400 maximum per ear every 36 months)	$0 copay	$0 copay	$0 copay	$0 copay
Audiometric Services (1 audiologist visit per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Vision Services (Eyeglass coverage shall be limited to $400 per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Prosthetic Devices ($1,500 maximum per 12 months)	$0 copay	$0 copay	$0 copay	$0 copay
Home Health Services (Limited to 25 visits per 12 months	$0 copay	$0 copay	$0 copay	$0 copay
Durable Medical Equipment	$0 copay	$0 copay	$0 copay	$0 copay
Early Periodic Screening and Diagnosis (EPSD)	$0 copay	$0 copay	$0 copay	$0 copay
Treatment (T) Services for Conditions Identified through EPSD (Not covered for KCHIP Children Separate CHIP Program)	$0 copay	$0 copay	$0 copay	Not Covered
Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to 907 KAR 3:110, coverage shall not be provided for KCHIP Children Separate CHIP Program)	$0 copay	$0 copay	$0 copay	Not Covered

(2) Physician office services include services provided by physicians, certified pediatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.

(3) Behavioral health services include mental health rehabilitation or stabilization, behavioral support, psychological services, and inpatient psychiatric services.

(4) To be covered by the department, an occupational therapy, physical therapy, or speech therapy visit shall be prior authorized.

(5) Except for the hearing aid coverage monetary limit, the eyeglass coverage monetary limit, and any age limit, the limits established in this section of this administrative regulation shall be soft in that they may be overridden if the department determines that the additional benefit is medically necessary.

Section 5. Global Choices. (1) Following is a grid establishing the global choices benefit package provisions:

Benefit	Individuals Exempt from Cost-sharing	Other Populations
Annual Nonpharmacy Benefit Cost-sharing Maximum	$225 per calendar year	$225 per calendar year
Annual Pharmacy Benefit Cost-sharing Maximum	$225 per calendar year	$225 per calendar year
Acute Inpatient Hospital Services	$0 copay	$50 copay per admission
Laboratory, Diagnostic and Radiology Services	$0 copay	$3 copay
Outpatient Hospital or Ambulatory Surgical Centers	$0 copay	$3 copay

~~Physician Office Services~~	~~$0 copay~~	~~$2 copay~~
~~Behavioral Health Services~~	~~$0 copay~~	~~$0 copay~~
~~Allergy Services~~	~~$0 copay~~	~~$0 copay~~
~~Preventive Services~~	~~$0 copay~~	~~$0 copay~~
~~Emergency Ambulance~~	~~$0 copay~~	~~$0 copay~~
~~Dental Services (Cleanings shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over; X-rays shall be limited to 1 set per 12 months regardless of age)~~	~~$0 copay~~	~~$2 copay~~
~~Family Planning~~	~~$0 copay~~	~~$0 copay~~
~~Occupational Therapy (Limited to fifteen (15) visits per 12 months)~~	~~$0 copay~~	~~$2 copay~~
~~Physical Therapy (Limited to fifteen (15) visits per 12 months)~~	~~$0 copay~~	~~$2 copay~~
~~Speech Therapy (Limited to 10 visits per 12 months)~~	~~$0 copay~~	~~$1 copay~~
~~Hospice (noninstitutional)~~	~~$0 copay~~	~~$0 copay~~
~~Nonemergency Transportation~~	~~$0 copay~~	~~$0 copay~~
~~Chiropractic Services (Children under the age of 21 limited to 7 visits per 12 months; Adults aged 21 and over limited to 15 visits per 12 months)~~	~~$0 copay~~	~~$2 copay~~
~~Prescription Drugs for Recipients who do not have Medicare Part D Coverage (limited to 4 prescriptions per month with a maximum of 3 brand name drug prescriptions)~~	~~$0 copay~~	~~$1 copay for generic or atypical antipsychotic if no generic equivalent for the atypical antipsychotic exists; $2 copay for preferred brand name drug; 5% coinsurance for nonpreferred brand name drug~~
~~Emergency Room~~	~~$0 copay~~	~~5% coinsurance for a nonemergency visit~~
~~Hearing Services (All hearing services shall be limited to children under age 21)~~	~~$0 copay~~	~~$0 copay~~
~~Hearing Aids (Coverage shall be limited to children under age 21 and to $1,400 per ear every 36 months)~~	~~$0 copay~~	~~$0 copay~~
~~Audiometric Services (Coverage shall be limited to children under age 21 and to 1 audiologist visit per 12 months)~~	~~$0 copay~~	~~$0 copay~~
~~Vision Services (All vision service coverage shall be limited to children under age 21; Eyeglass coverage shall be limited to $200 per 12 months)~~	~~$0 copay~~	~~$0 copay~~
~~Prosthetic Devices~~	~~$0 copay~~	~~$0 copay~~
~~Home Health Services~~	~~$0 copay~~	~~$0 copay~~
~~Durable Medical Equipment~~	~~$0 copay~~	~~3% coinsurance not to exceed $15 per month~~
~~Early Periodic Screening and Diagnosis (EPSD)~~	~~$0 copay~~	~~$0 copay~~
~~Treatment (T) Services for Conditions Identified through EPSD (Coverage shall be limited to children under age 21)~~	~~$0 copay~~	~~$0 copay~~
~~Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to 907 KAR 3:110)~~	~~$0 copay~~	~~$0 copay~~
~~Maternity Services (Coverage shall include nurse midwife services, pregnancy-related services, services for other conditions that might complicate pregnancy or 60 days postpartum pregnancy-related services)~~	~~$0 copay~~	~~$0 copay~~
~~Podiatry Services~~	~~$0 copay~~	~~$2 copay~~
~~End Stage Renal Disease and Transplants~~	~~$0 copay~~	~~$0 copay~~

~~(2) Physician office services includes services provided by physicians, certified pediatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.~~

~~(3) Behavioral health services include mental health rehabilitation or stabilization, behavioral support, psychological services, and inpatient psychiatric services.~~

~~(4) To be covered by the department, an occupational therapy, physical therapy, or speech therapy visit shall be prior authorized.~~

~~(5) Except for the hearing aid coverage monetary limit, the eyeglass coverage monetary limit, and any age limit, the limits established in this section shall be soft in that they may be overridden if the department determines that the additional benefit is~~

~~medically necessary.~~

~~Section 6. Optimum Choices. (1) Following is a grid establishing the optimum choices benefit package provisions:~~

~~Benefit~~	~~ICF – MR – DD Level of Care (including SCL waiver)~~
~~Medical Out of Pock Annual Nonpharmacy Benefit Cost-sharing Maximum~~	~~$225 per calendar year~~
~~Annual Pharmacy Benefit Cost sharing Maximum~~	~~$225 per calendar year~~
~~Acute Inpatient Hospital Services~~	~~$10 copay~~
~~Laboratory, Diagnostic and Radiology Services~~	~~$0 copay~~
~~Outpatient Hospital or Ambulatory Surgical Centers~~	~~$3 copay~~
~~Physician Office Services*~~	~~$0 copay~~
~~Behavioral Health Services**~~	~~$0 copay~~
~~Allergy Services~~	~~$0 copay~~
~~Preventive Services~~	~~$0 copay~~
~~Emergency Ambulance~~	~~$0 copay~~
~~Dental Services (Cleanings shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over; X-rays shall be limited to 1 set per 12 months regardless of age)~~	~~$0 copay~~
~~Family Planning~~	~~$0 copay~~
~~Occupational Therapy (Limited to 30 visits per 12 months)~~	~~$0 copay~~
~~Physical Therapy (Limited to 30 visits per 12 months)~~	~~$0 copay~~
~~Speech Therapy (Limited to 30 visits per 12 months)~~	~~$0 copay~~
~~Hospice (noninstitutional)~~	~~$0 copay~~
~~Nonemergency Transportation~~	~~$0 copay~~
~~Chiropractic Services (Children under the age of 21 shall be limited to 7 visits per 12 months; Adults age 21 and over shall be limited to 15 visits per 12 months)~~	~~$0 copay~~
~~Prescription Drugs (for members who do not have Medicare Part D) Prescription Drugs for Recipient who do not have Medicare Part D (Limited to 4 prescriptions per month with a maximum of 3 brand name prescriptions)~~	~~$1 copay for generic or atypical antipsychotic if no generic equivalent for the atypical antipsychotic exists; $2 copay for preferred brand name drug; 5% coinsurance for nonpreferred brand name drug~~
~~Emergency Room~~	~~5% coinsurance for a nonemergency visit~~
~~Hearing Services (All hearing service coverage shall be limited to children under age 21)~~	~~$0 copay~~
~~Hearing Aids (Coverage shall be limited to children under age 21 and to $1,400 per ear every 36 months)~~	~~$0 copay~~
~~Audiometric Services (Coverage shall be limited to children under age 21 and to 2 audiologist visit per 12 months)~~	~~$0 copay~~
~~Vision Services (All vision services shall be limited to children under age 21, Eyeglass coverage shall be limited to $400 per 12 months)~~	~~$0 copay~~
~~Prosthetic Devices~~	~~$0 copay~~
~~Home Health Services~~	~~$0 copay~~
~~Durable Medical Equipment~~	~~3% coinsurance up to a maximum of $15 per month~~
~~Early Periodic Screening and Diagnosis (EPSD)~~	~~$0 copay~~
~~Treatment (T) Services for Conditions Identified through EPSD (Coverage shall be limited to children under age 21)~~	~~$0 copay~~
~~Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to 907 KAR 3:110)~~	~~$0 copay~~
~~Maternity Services (Coverage shall include nurse midwife services, pregnancy related services, services for other conditions that might complicate pregnancy or 60 days postpartum pregnancy related services)~~	~~$0 copay~~
~~Podiatry Services~~	~~$2 copay~~
~~End Stage Renal Disease and Transplants~~	~~$0 copay~~

~~(2) Physician office services includes services provided by physicians, certified podiatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.~~

~~(3) Behavioral health services include mental health rehabilitation or stabilization.~~

~~(4) To be covered by the department, an occupational therapy, physical therapy, or speech therapy visit shall be prior authorized.~~

~~(5) Except for the hearing aid coverage monetary limit, the eyeglass coverage monetary limit, and any age limit, the limits established in this section shall be soft in that they may be overridden if the department determines that the additional benefit is medically necessary.~~

~~Section 7. Copayment Provisions. (1) The copayments established in 907 KAR 1:604 shall supersede any copayments established in this administrative regulation if any contradiction exists.~~

~~(2) The department shall impose no cost sharing for the following:~~

~~(a) A service furnished to an individual under eighteen (18) years of age required to be provided medical assistance under Social Security Act 1902(a)(10)(A)(i), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B, to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E, without regard to age;~~

~~(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income;~~

~~(c) A service furnished to a pregnant woman, if the service relates to the pregnancy or to any other medical condition which may complicate the pregnancy;~~

~~(d) A service furnished to a terminally ill individual who is receiving hospice care as defined in Social Security Act 1905(o);~~

~~(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under the state plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;~~

~~(f) An emergency service as defined by 42 C.F.R. 447.53;~~

~~(g) A family planning service or supply as described in Social Security Act 1905(a)(4)(C), or~~

~~(h) A service furnished to a woman who is receiving medical assistance via the application of Social Security Act~~

~~1902(a)(10)(A)(ii)(XVIII) and 1902(aa).~~

~~Section 8. Covered Service Appeal. An appeal of a department decision regarding a covered service for a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.~~]

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation transforms the Kentucky Medicaid program by tailoring benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), will provide innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KyHealth Choices benefit packages in order to maintain the viability of the Medicaid program and to transform it into a program tailored to beneficiaries' needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), will provide innovative opportunities to Medicaid and KCHIP beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, including Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), by maintaining the viability of the Medicaid program by transforming it into a program tailored to beneficiaries' needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Public Law 109-171 (aka the Deficit Reduction Act of 2005), will provide innovative opportunities to Medicaid and KCHIP beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes, including Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), by maintaining the viability of the Medicaid program by transforming it into a program tailored to beneficiaries' needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), will provide innovative opportunities to Medicaid and KCHIP beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amended after comments regulation eliminates cost-sharing and service limit provisions given that those policies are addressed in other regulations specifically designed to establish those provisions. Additionally, the amended after comments regulation defines benefit plan and package code.
(b) The necessity of the amendment to this administrative regulation: The amended after comments regulation is necessary to eliminate potential confusion or discrepancies.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, including Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), by maintaining the viability of the Medicaid program by transforming it into a program tailored to beneficiaries' needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Pub.L. 109-171 will provide innovative opportunities to Medicaid and KCHIP beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth. The amended after comments regulation conforms to the authorizing statutes by eliminating potential confusion or discrepancies with other regulations governing service coverage and cost-sharing.
(d) How the amendment will assist in the effective administration of the statutes: The regulation assists in the effective administration of the statutes, including Pub.L. 109-171 (aka the Deficit Reduction Act of 2005), by maintaining the viability of the Medicaid program by transforming it into a program tailored to beneficiaries' needs. This initiative, which has already been approved by the Centers for Medicare and Medicaid Services and is being enacted in accordance with Pub.L. 109-171, will provide innovative opportunities to Medicaid and KCHIP beneficiaries, and will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth. The amended after comments regulation assists in the effective administration of the authorizing statutes by eliminating potential confusion or discrepancies with other regulations governing service coverage and cost-sharing.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation and amended after comments regulation will affect all Medicaid and KCHIP program beneficiaries.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid and KCHIP program beneficiaries will not have to take any action to comply with the administrative regulation other than to notify the department if the individual wishes to be considered for enrollment into a different benefit package or opt out of the comprehensive or optimum choices package and be enrolled into the benchmark plan which is global choices.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries will not experience any cost as a result of the amended after comments administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medicaid recipients will be enrolled into one of 4 benefit packages as a result of compliance.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: DMS anticipates that this amendment will generate a savings of approximately $94.9 million ($64.7 million federal funds; $30.2 million state funds) during State Fiscal Year (SFY) 2007.
(b) On a continuing basis: DMS anticipates that this amendment will generate an increasing amount of annual savings in subsequent years, potentially topping $100 million ($68.2 million fed-

eral funds; $31.8 million state funds) in savings as early as SFY 2008.

(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.

(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: A funding increase is unnecessary; however, an increase in certain designated cost-sharing amounts or imposition of new cost-sharing requirements 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 increases and imposes certain designated cost-sharing requirements.

(9) Tiering: Is tiering applied? This administrative regulation includes tiering in order to transform the Medicaid program into one tailored to individual medical needs and circumstances. The transformed program provides innovative opportunities to Medicaid and KCHIP beneficiaries which will promote healthy lifestyles, personal accountability, and responsible program governance for a healthier Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all Medicaid and KCHIP program beneficiaries.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. Additionally, this administrative regulation and amended after comments regulation comply Pub.L. 109-171, governing the Medicaid program, and KRS 205.6312(5) by establishing cost-sharing provisions for 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. Also, this administrative regulation and amended after comments regulation comply with KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under KCHIP.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year; however, DMS anticipates that this amendment will generate a savings of approximately $94.9 million ($64.7 million federal funds; $30.2 million state funds) during State Fiscal Year (SFY) 2007.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years of implementation; however, DMS anticipates that this amendment will generate an increasing amount of annual savings in subsequent years, potentially topping $100 million ($68.2 million federal funds; $31.8 million state funds) in savings as early as SFY 2008.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 42 C.F.R. 440.50, 415.152, 415.174, 415.184, [~~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 physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Common practice" means a contractual partnership in which a physician assistant administers health care services under the employment and supervision of a physician.

(2) "Comprehensive choices" means comprehensive choices as defined in 907 KAR 1:900, Section 1.

(3) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(4) [~~(3)~~] "Department" means the Department for Medicaid Services or its designated agent.

(5) [~~(4)~~] "Direct physician contact" means that the physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(6) [~~(6)~~] "Emergency care" means:

(a) Covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(7) [~~(6)~~] "EPSDT" means early and periodic screening, diagnosis, and treatment.

(8) "Family choices" means family choices as defined in 907 KAR 1:900, Section 1.

(9) [~~(7)~~] "Global" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(10) "Global choices" means global choices as defined in 907 KAR 1:900, Section 1.

(11) [~~(8)~~] "Graduate medical education program" or "GME" means one (1) of the following:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b) [413.86(b)].

(12) [(9)] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(13) [(10)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(14) [(11)] "KenPAC" means the Kentucky Patient Access and Care System.

(15) [(12)] "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(16) [(13)] "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

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

(18) [(15)] "Medical resident" means one (1) of the following:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(19) [(16)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one 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.

(20) "Optimum choices" means optimum choices as defined in 907 KAR 1:900, Section 1.

(21) [(17)] "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.

(22) [(18)] "Physician assistant" is defined in KRS 311.840(3).

(23) [(19)] "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.

(24) [(20)] "Supervising physician" means a licensed physician who directly oversees a physician assistant or other licensed medical professional.

(25) [(21)] "Supervision" is defined in KRS 311.840(6).

(26) [(22)] "Timely filing" means receipt of a claim to Medicaid:

(a) Within twelve (12) months of the date a service is provided;

(b) Within twelve (12) months of the date retroactive eligibility is established; or

(c) Within six (6) months of the Medicare adjudication date, if the service is billed to Medicare.

(27) [(23)] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located.

(2) A participating physician 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 appeals process, and sanctions; and

(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid as specified in Section 4 of this administrative regulation if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, mutually exclusive, or global to a covered service;

2. Incorrect billing procedures;

3 Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) To be covered by the department, a service shall:

(a) Be medically necessary;

(b) Effective August 1, 2006, clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) [A covered service shall be a medically necessary service which is-

(a)] Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) [(b)] Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

(b) A service provided by a locum tenens physician who provides direct physician contact;

(c) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact,

(d) The telephone analysis of emergency medical systems or cardiac pacemaker if provided under physician direction;

(e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;

(f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170; or

(g) A service provided by a physician assistant in accordance with Section 6 of this administrative regulation.

(3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(a) The individual is employed by the supervising physician;

(b) The individual is licensed in the state of practice; and

(c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider

unless.

(a) The service represents emergency care; or

(b) The recipient has been referred by the "lock-in" provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug,

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device; or

(i) An implantable contraceptive device

(5) 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.

(6) Coverage for a service designated as a psychiatry service CPT code and provided by a physician other than a board certified or board eligible psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(8) 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

(9)(a) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(b) Except for an anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(10) The following services shall not be covered:

(a) An acupuncture service,

(b) Allergy immunotherapy for a recipient age twenty-one (21) years or older;

(c) An autopsy;

(d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);

(e) Except for therapeutic bandage lenses, contact lenses;

(f) A hysterectomy performed for the purpose of sterilization,

(g) Lasik surgery;

(h) Paternity testing;

(i) A procedure performed for cosmetic purposes only;

(j) A procedure performed to promote or improve fertility;

(k) Radial keratotomy;

(l) A thermogram,

(m) An experimental service which is not in accordance with current standards of medical practice; or

(n) A service which does not meet the requirements established in Section 3(1) of this administrative regulation [~~has been determined not medically necessary by the department~~].

Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department prior to reimbursement:

(a) Magnetic resonance imaging (MRI);

(b) Magnetic resonance angiogram (MRA);

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography (PET);

(e) Cineradiography/videoradiography;

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) An unlisted procedure or service. [~~Outpatient surgery (performed in an outpatient hospital setting),~~

~~(b) Cardiac catheterization;~~

~~(c) Lithotripsy;~~

~~(d) Computed tomography (CT) imaging;~~

~~(e) Computed tomographic angiography (CTA);~~

~~(f) Computed tomography guidance;~~

~~(g) Magnetic resonance imaging (MRI);~~

~~(h) Magnetic resonance angiogram (MRA);~~

~~(i) Magnetic resonance spectroscopy;~~

~~(j) Positron emission tomography (PET);~~

~~(k) Dual energy X-ray absorptiometry (DXA);~~

~~(l) Radiographic absorptiometry;~~

~~(m) Cineradiography/videoradiography;~~

~~(n) Xeroradiography;~~

~~(o) Ultrasound subsequent to second (2nd) obstetric ultrasound;~~

~~(p) Unlisted procedure;~~

~~(q) Myocardial imaging;~~

~~(r) Cardiac blood pool imaging;~~

~~(s) Single Photon Emission Computed Tomography (SPECT);~~

~~(t) Sensory nerve conduction test (SNCT);~~

~~(u) Magnetic resonance cholangiopancreatography (MRCP);~~

~~(v) Topographic brain mapping;~~

~~(w) Magnetic source imaging;~~

~~(x) Fluorine-18 fluorodeoxyglucose (F-18 FDG) imaging;~~

~~(y) Electron beam computed tomography (also known as Ultrafast CT, Cine CT); and~~

~~(z) Magnetic Resonance Technology (MRT) General~~

~~(aa)~~] [~~(a) Allergy immunotherapy for a recipient under the age of twenty-one (21) years;~~

~~(b)~~] [~~Gastric restrictive surgery or gastric bypass surgery;~~

~~(bb)~~] [~~(c) A positron emission tomography (PET) scan;~~

~~(d)~~] [~~A procedure that is commonly performed for cosmetic purposes;~~]

[~~(e) A sleep disorder service;~~]

[~~(ee)~~] [~~(f)~~] [~~A surgical procedure that requires completion of a federal consent form; or~~

~~(dd)~~] [~~(g)~~] [~~An unlisted procedure or service~~]

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) **The prior authorization requirements established in subsection (1) of this section shall not apply to:**

(a) An emergency service; or

(b) A radiology procedure if the member has a cancer or transplant diagnosis code.

(4) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(5) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner [~~A physician~~] shall request prior authorization by mailing or faxing:

(a) A written request to the department with sufficient information to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

(b) [~~support medical necessity and,~~] If applicable, any required federal consent forms.

(6) [~~(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 6. **Therapy Limits. (1) Speech therapy shall be limited to:**

(a) Ten (10) visits per twelve (12) months for a member of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a member of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan; and

(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit plan.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a member of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a member of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan; and

(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit plan.

(3) Occupational therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a member of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a member of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan; and

(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit plan.

(4) The therapy limits established in subsection (1) through (3) of this section shall be soft, meaning that they may be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(5) Except for recipients under age twenty-one (21), prior authorization is required for each visit that exceeds the limit established in subsection (1) through (3) of this section.

Section 7. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) and (3) of this section, a [~~medically necessary~~] service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is provided through direct patient interaction;

(c) [~~(b)~~] The service is within the legal scope of certification of the physician assistant as specified in 201 KAR 9.175;

(d) [~~(c)~~] The service is billed under the physician's individual provider number with the physician assistant's number included; and

(e) [~~(d)~~] The physician assistant complies with:

1. KRS 311.858; and

2. Sections 2(2) and (3) of this administrative regulation regarding physicians' services.

(2) A [~~The~~] same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(10) of this administrative regulation;

(b) An anesthesia service;

(c) An obstetrical delivery service; or

(d) A service provided in assistance of surgery.

Section 8. [~~7.~~] Appeal Rights. (1) 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.

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

(3) 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.

MARK D. BIRDWHISTELL, Secretary

MIKE BURNSIDE, Undersecretary

GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: October 12, 2006

FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participation requirements for physicians and the coverage criteria for services provided by physicians to Medicaid recipients.

(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 fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations for the provision of medically necessary physician services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the utilization of criteria by the department to determine the clinical appropriateness of any given service. The amended after comments regulation includes in Section 5(1) a revised list of services that require prior authorization. The amended after comments regulation further clarifies that prior authorization is not required for any radiology procedure if the patient has a cancer or transplant diagnosis code. Also, the amended after comments regulation establishes soft limits on speech, physical, and occupational therapy services.

(b) The necessity of the amendment to this administrative regulation: The amendment and amended after comments regulation is necessary to ensure appropriateness of care and to maintain the viability of the Medicaid program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment and amended after comments regulation conforms to the content of the authorizing statutes by establishing the use of criteria to determine the clinical appropriateness of care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment and amended after comments regulation assists in the effective administration of the statutes by establishing the use of criteria to determine the clinical appropriateness of care

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All fee for service Medicaid recipients and all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation and amended after comments regulation, physicians will be subject to prior authorization requirements for designated procedures. Additionally, in order to be reimbursed, a service provided by a physician must be clinically appropriate pursuant to 907 KAR 3:130.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): No costs are required of regulated entities for compliance with this amendment and amended after comments regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment and amended after comments regulation establishes the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care as well as clarify services requiring prior authorization.

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

(a) Initially: The Department for Medicaid Services (DMS) is amending this administrative regulation in conjunction with the physician reimbursement administrative regulation, and estimates that the sum impact of all amendments will result in a budget neutral impact or savings depending upon utilization variables.

(b) On a continuing basis: DMS is amending this administrative regulation in conjunction with the physician reimbursement administrative regulation, and estimates that the sum impact of all amendments will result in a budget neutral impact or savings depending upon utilization variables.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment and amended after comments 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect all fee for service Medicaid recipients and all physicians enrolled in the Kentucky Medicaid Program (approximately 15,000).

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years of implementation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(Amended After Comments)

907 KAR 3:125. Chiropractic services and reimbursement.

RELATES TO: KRS 312.015, 312.017, 42 C.F.R. 440.230, 441 Subpart B[~~, 42 U.S.C. 1396d(r)~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, Pub.L. 109-171 [~~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 chiropractic services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy and amends coverage in accordance with Pub.L. 109-171.

Section 1. Definitions. (1) "Chiropractic service" means the diagnosis and the therapeutic adjustment or manipulation of the subluxations of the articulations of the human spine and its adjacent tissues performed by, and within the scope of licensure of, a licensed chiropractor in accordance with KRS 312.015 and 312.017.

(2) "Chiropractor" is defined in KRS 312.015(3).

(3) "Current procedural terminology code" or "CPT code" means the identifying code used by the department for reporting a medical service or procedure.

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

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

~~(a) Provided in accordance with 42 C.F.R. 440.230;~~

~~(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;~~

~~(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;~~

~~(d) Provided for medical reasons rather than primarily for the convenience of a recipient, caregiver, or provider;~~

~~(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;~~

~~(f) Needed, if used in reference to an emergency medical ser-~~

~~vice, to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and~~

~~(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. 441 Subpart B for eligible recipients under twenty-one (21) years of age.~~]

(6) "Usual and customary charge" means the uniform amount that a medical provider charges to a private-pay patient or third-party payor in the majority of cases for a specific medical procedure or service.

Section 2. Covered Services. (1) A covered chiropractic service shall include the following:

(a) An evaluation and management service;

(b) Chiropractic manipulative treatment;

(c) Diagnostic X-rays;

(d) Application of a hot or cold pack to one (1) or more areas;

(e) Application of mechanical traction to one (1) or more areas;

(f) Application of electrical stimulation to one (1) or more areas; and

(g) Application of ultrasound to one (1) or more areas.

(2) A chiropractic service shall be covered, including reimbursement limits, to the extent [~~:~~

~~(a) If medically necessary;~~

~~(b) If clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and~~

~~(c) Except as specified in Section 3 of this administrative regulation,~~] [~~a medically necessary chiropractic service shall be covered~~] [~~to the extent~~][~~,~~] [~~and subject to the service and reimbursement limitations~~][~~,~~] that the same service is covered by the department for a physician.

(3) A chiropractic service [~~and~~] shall be reported using:

(a) An evaluation and management CPT code;

(b) A chiropractic manipulative treatment CPT code;

(c) A diagnostic X-ray CPT code; or

(d) Physical modality application CPT codes for the following:

1. Application of a hot or cold pack to one (1) or more areas;

2. Application of mechanical traction to one (1) or more areas;

3. Application of electrical stimulation to one (1) or more areas; and

4. Application of ultrasound to one (1) or more areas.

(4) Coverage of chiropractic services shall:

(a) Be based on medical necessity;

(b) Be limited to twenty-six (26) visits per recipient per twelve (12) month period.

(5) The visit limit shall be a hard limit, meaning the department shall not cover chiropractic visits in excess of twenty-six (26) visits per twelve (12) month period. [~~Unless a recipient's health care provider demonstrates that chiropractic services in excess of the following limitations are medically necessary, coverage of chiropractic services shall be limited to:~~

~~(a) Fifteen (15) chiropractic visits per year for a recipient age twenty-one (21) years and older; and~~

~~(b) Seven (7) chiropractic visits per year for a recipient under twenty-one (21) years of age~~] [~~(3) Coverage for a chiropractic service shall be based on medical necessity~~].

[~~Section 3. Prior Authorization. (1) Prior authorization from the department shall be required for reimbursement of a covered service, specified in Section 2(1) of this administrative regulation, for each chiropractic visit, including any additional visit beyond the service limitation established in Section 2(4) of this administrative regulation~~] [~~provided during a chiropractor-recipient face-to-face contact with the same provider occurring after the initial twelve (12) contacts. If there has been an interval of at least six (6) months since the last chiropractor-recipient face-to-face contact with the same provider, up to twelve (12) additional chiropractor-recipient face-to-face contacts shall be reimbursed, if medically necessary, without prior authorization from the department~~].

[~~(2) A chiropractor shall request prior authorization by mailing or faxing the following information to the department:~~

~~(a) A completed Kentucky Form MAP-810, Chiropractic Prior Authorization Form, and~~

~~(b) If requested by the department, additional information required to establish medical necessity.~~]

Section 3. [~~4.~~] Reimbursement for Covered Services. (1) A charge for a chiropractic service submitted to the department for payment shall not exceed the usual and customary charge to a private-pay patient or third-party payor for an identical procedure or service.

(2) For reimbursement of a covered service, a chiropractor shall be paid the lessor of the chiropractor's usual and customary actual billed charge or an amount determined in accordance with the physician fee schedule established in 907 KAR 3:010.

Section 4. [~~5.~~] Conditions for Provider Participation. A participating chiropractor shall:

(1) Be licensed as a chiropractor in Kentucky or in the geographic location in which chiropractic services are provided;

(2) Have an active Medicare provider number; and

(3) Meet the requirements for provider participation in the Kentucky Medicaid Program in accordance with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

Section 5. [~~6.~~] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

[~~Section 7. Incorporation by Reference. (1) "Ky. Form MAP-810, Chiropractic Prior Authorization Form, September 26, 2000 edition," is incorporated by reference.~~

~~(2) The 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.~~]

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes coverage provisions related to chiropractic services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish chiropractic service coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for payment to be made under the Medicaid program for services that are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent that Medicaid pays for the same services provided by a physician.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows Medicaid coverage of chiropractic services provided by a licensed chiropractor in accordance with KRS 205.560.

(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 removes the

originally proposed chiropractic visit limit and prior authorization requirement established in the onginal amendment. In the original amendment, the department proposed that reimbursement would be available for no more than 15 chiropractic visits per year for a recipient age 21 and older, and no more than 7 chiropractic visits per year for a recipient under age 21. The original amendment also required prior authorization before each chiropractic visit. The amended after comments regulation clarifies that chiropractic services will be limited to no more than 26 visits per 12-month period for all KyHealth Choices members regardless of age. This visit limit will not be subject to overrides. Therefore, the department will not approve visits in excess of 26 per year. The amended after comments regulation further removes the prior authorization requirement for chiropractic visits. Prior authonzation will not be required before any of the twenty-six (26) allowable visits per 12 months.

(b) The necessity of the amendment to this administrative regulation: This amendment and amended after comments regulation is being enacted in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments regulation establish chiropractic service limitations in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments regulation will assist in the effective administration of the authorizing statutes by limiting chiropractic service coverage to 26 visits per 12-month period in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1.900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients in need of chiropractic services and chiropractic providers will be affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under the amended after comments regulation, recipients will be subject to 26 chiropractic visits per 12-month period. This visit limit is not subject to overrides Therefore, the department will not approve visits in excess of 26 per 12-month period. These actions are being taken in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Recipients will be financially responsible for any chiropractic visit in excess of 26 per 12-month period.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The transformed program, known as KyHealth Choices, provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles and personal accountability.

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

(a) Initially: No additional costs are necessary to implement this amendment; the department anticipates an initial savings of $130,390 as a result of capping chiropractic visits at 26 per 12-month period.

(b) On a continuing basis: No additional costs are necessary to implement this amendment; the department anticipates a continuing savings of $130,390 as a result of capping chiropractic visits at 26 per 12-month period.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund and restricted 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 nor funding will be necessary to implement the amendment 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 or increase fees.

(9) Tiering: Is tiering applied? Tiering by age group was applied in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices, and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs. Family choices is designed for children. Global choices is the basic coverage plan, and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect Medicaid recipients in need of chiropractic services and chiropractic providers.

3. Identify each state or federal regulation that requires or authonzes the action taken by the administrative regulation. 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. Additionally, this administrative regulation and

amended after comments regulation comply Pub.L. 109-171, governing the Medicaid program, by establishing visit limitations for Medicaid recipients.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment during the first year; the Department anticipates an initial savings of $130,390 as a result of capping chiropractic visits at 26 per 12-month period.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment during subsequent years; the department anticipates an initial savings of $130,390 as a result of capping chiropractic visits at 26 per 12-month period.

Note: 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 Administration and Financial Management
(Amended After Comments)

907 KAR 3:130. Medical necessity and clinically appropriate determination basis.

RELATES TO: KRS 205.520, 42 C.F.R. 440.230, 441 Subpart B, 42 U.S.C. 1396d (r)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, 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 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 basis for the determination of the medical necessity and clinical appropriateness of benefits and services for which payment shall be made by the Medicaid Program on behalf of both the categorically and the medically needy.

Section 1. Definitions. (1) "Clinically appropriate" means appropriate pursuant to nationally-recognized clinical criteria for which the department has contracted.

(2) "Covered benefit" or "covered service" means a health care service or item for which the department shall reimburse in accordance with state and federal regulations.

(3) [~~(2)~~] "Department" means the Department for Medicaid Services or its designated agent.

(4) [~~(3)~~] "Medically necessary" or "medical necessity" means a covered benefit is:

(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(b) [~~Clinically~~] Appropriate in terms of the service, amount, scope, and duration based on generally-accepted standards of good medical practice;

(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;

(d) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided,

(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;

(f) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for individuals under twenty-one (21) years of age; and

(g) Provided in accordance with 42 C.F.R. 440.230.

(5) [~~(4)~~] "Prudent layperson standard" means the standard for determining the existence of an emergency medical condition whereby a prudent layperson who possesses an average knowledge of health and medicine determines that a medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the person could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Section 2. Medical Necessity Determination. (1) The determination of whether a covered benefit or service is medically necessary shall:

(a) Be based on an individualized assessment of the recipient's medical needs, and

(b) Comply with the definition of medically necessary established in Section 1(3) of this administrative regulation.

(2) The department shall have the final authority to determine the medical necessity and clinical appropriateness of a covered benefit or service and shall ensure the right of a recipient to appeal a negative action in accordance with 907 KAR 1:563.

Section 3. Criteria to Establish Clinical Appropriateness. (1) The department shall utilize criteria to determine if a given Medicaid service or benefit is clinically appropriate.

(2) The criteria referenced in subsection (1) of this section shall be nationally-recognized clinical criteria for which the department has contracted.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 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: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes medical necessity and clinical appropriateness for Medicaid coverage authorization purposes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish medical necessity and clinical appropriateness for Medicaid coverage authorization purposes.

(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 medical necessity and clinical appropriateness for Medicaid coverage au-

thonzation purposes.

(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 medical necessity and clinical appropriateness for Medicaid coverage authorization purposes.

(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 the use of criteria to determine clinically appropriateness of any given Medicaid service or benefit for an individual. The amended after comments regulation clarifies that appeals provisions apply to clinical appropriateness determinations and clarifies that the medical necessity definition is distinct from the clinically appropnate definition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the use of criteria to determine clinically appropriateness of any given Medicaid service or benefit for an individual. The amended after comments regulation is necessary to clarify appeals policy as well as the medical necessity definition.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of authorizing statutes by establishing the use of criteria to determine clinically appropnateness of any given Medicaid service or benefit for an individual. The amended after comments regulation conforms to the content of authorization statutes by clanfying appeals policy as well as the medical necessity definition.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing the use of criteria to determine clinically appropriateness of any given Medicaid service or benefit for an individual. The amended after comments regulation assists in the effective administration of the statutes by clanfying appeals policy as well as the medical necessity definition.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation. This amendment affects all Medicaid providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a)List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment to this administrative regulation establishes the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care. The criteria will be utilized to determine whether a given service or benefit will be covered by the Medicaid program. The amended after comments regulation clanfies that appeals provisions apply to clinical appropriateness determinations and clanfies that the medical necessity definition is distinct from the clinically appropriate definition. Care provided by regulated entities must meet the criteria established in the regulation in order to be covered by the Department for Medicaid Services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (c): No costs are required of regulated entities for compliance with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation establishes the use of criteria by the Department for Medicaid Services to determine the clinical appropnateness of any given care.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool.

(b) On a continuing basis: DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropriate criteria is the prior authorization tool

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

(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 current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropnate 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 STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect Medicaid providers.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The DMS anticipates a 1% reduction in expenditures for any given procedure for which the clinically appropnate criteria is the prior authorization tool.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates a one (1) percent reduction in expenditures for any given procedure for which the clinically appropnate criteria is the prior authorization tool.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____
Expenditures (+/-). ____
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amended After Comments)

922 KAR 2:210. STARS for KIDS NOW Program for Type II licensed and certified family child care providers.

RELATES TO. KRS 13B.125, 199.894, 199 8941, 199 8943, 199.8982, 199.8992, 199 990, 42 U S C. 601 to 619, 45 C F.R. 98

STATUTORY AUTHORITY. KRS 194A 050(1), 199.8941(1), 199.8943(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Health and Family Services to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for family child care providers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type II licensed child care centers and certified family child care providers and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Quality Rating Program.

Section 1. Definitions. (1) "Commonwealth Child Care Credential" means a certificate of completion of sixty (60) clock hours of instruction from a state agency-approved organization in accordance with 922 KAR 2:250 [that:

~~(a) Includes training in the following areas:~~
~~1. Child growth and development;~~
~~2. Learning environments and curriculum;~~
~~3. Health, safety, and nutrition;~~
~~4. Family and community partnerships;~~
~~5. Child assessments;~~
~~6. Professional development; and~~
~~7. Program management; and~~
~~(b) Shall be effective for a period of one (1) year, and~~
~~(c) Shall be renewed upon completion of fifteen (15) hours of training~~].

(2) "Environment rating scale" means one (1) of four (4) rating scales designed to assess the process quality in an early childhood or school age care group, and consists of the following items to evaluate:

(a) Physical environment,
(b) Basic care;
(c) Curriculum;
(d) Interaction;
(e) Schedule and program structure; and
(f) Parent and staff education.

(3) "Family child care home" is defined in KRS 199 894(5) [~~child-care provider" or "provider" means an individual.~~

~~(a) Certified in accordance with KRS 199.8982 and 922 KAR 2:100, to operate a family child care home, as defined at KRS 199 894(5), or~~

~~(b) Licensed in accordance with KRS 199 896 and 922 KAR 2 090, 922 KAR 2 110, and 922 KAR 2 120, to operate a child care center, as defined at 199 894(3), in a home or dwelling unit that is the full-time residence of the licensee.~~

~~(3) "Family Day Care Rating Scale" or "FDCRS" means a rating scale conducted in a provider's home to assess quality of the environment and services provided.~~]

(4)"Parental or family participation" means involvement of a parent or custodian in a child care provider's attempt to provide information or include the parent or custodian in the provider's activities, such as:

(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between the provider and a parent or custodian; or
(d) Other activity designed to engage a parent or custodian in the program's activities.

(5) [~~"Program" or~~] "STARS for KIDS NOW Program" or "STARS" means the voluntary quality-based graduated childcare rating system established by KRS 199.8943(1).

(6) "Type II Center" means a child care center licensed by the cabinet or its designee in accordance with 922 KAR 2 090; 2:110, and 2:120 and provides care:

(a) In a home or dwelling unit that is the full-time residence of the licensee; and

(b) For seven (7), but not more than twelve (12) children [~~"Provisional quality rating certificate" means a six (6) month probationary certificate issued to a new participant in the program immediately upon change of ownership of a child care center.~~

~~(7) "Resource and referral agency" means a cabinet designated entity described at KRS 199.8992(1).~~

~~(8) "State agency" means the~~
~~(a) Cabinet for Health and Family Services~~]

Section 2. Application. (1) A Type II center or a certified family child care home may:

(a) Apply to participate in the STARS program after six (6) months from the date of initial licensure or certification; and

(b) Achieve a quality rating certificate of Level 1 through Level 4

(2) If an applicant seeks participation in STARS as a Level 1 (1) quality rating certificate [~~provider~~]:

(a) The applicant shall complete a:

1. "DCC-400, Level 1 Rating Certificate Application"; and

2. "DCC-401, STARS for KIDS NOW-Level 1 Standards Check List"; [~~an "Application for Level One (1) Rating Certificate", incorporated by reference,~~] and

(b) The cabinet or its designee [~~A resource and referral agency staff person~~] shall verify on the DCC-401, [~~Level One (1) Standards, incorporated by reference,~~] the provider's documented compliance with the Level 1 [~~one (1)~~] requirements described in Section 3 of this administrative regulation.

(3) If an applicant seeks a Level 2, 3, or 4 quality rating certificate, the

(a) Applicant shall complete a "DCC-405, STARS for KIDS NOW Rating Visit Request Form"; and

(b) Cabinet or its designee;

1. Shall contact the applicant within fifteen (15) working days to schedule a STARS rating visit, upon receipt of a completed DCC-405;

2. And the applicant shall agree to a two (2) week time period for the STARS rating visit to occur; and

3. Shall issue to an approved applicant, within sixty (60) calendar days from the date of the STARS rating visit, a quality rating certificate that shall:

a. Be valid for a period specified in Section 8(3) of this administrative regulation; and

b. Specify the rating level approved for the child care provider.

(4) For the purpose of redetermining the center's rating, [~~(2) An applicant seeking participation as a Level two (2), three (3), or four (4) provider shall obtain a "STAR Rating Visit Request Form", incorporated by reference, from a resource and referral agency.~~

~~(a) An individual certified to operate a family child care home shall submit the completed form to the cabinet.~~

~~(b) An individual licensed to operate a Type II child care home shall submit the completed form to the cabinet.~~

~~(3) Upon receipt of a properly completed "STAR Rating Visit Request Form" the state agency shall:~~

~~(a) Schedule a prearranged rating visit [within sixty (60) calendar days;~~

~~(b) Complete an FDCRS during the initial and each subsequent rating visit; and~~

~~(c) Issue to the applicant, within sixty (60) calendar days from the date of the rating visit, a quality rating certificate that shall:~~

~~1. Be valid for the period of one (1) year, and~~

~~2. Specify the rating level representing a provider's compliance~~

~~with the requirements of that level.~~

~~(4)~~] a participant in the STARS Program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit [~~for the purpose of redetermining the provider's rating~~].

(5) A child care provider applying or participating in the STARS program shall:

(a) Not have an immediate closure, denial of relicensure or recertification, suspension, or revocation action against the child care provider's license or certificate; and

(b) Pay any civil penalty levied against the child care provider if the:

1. Child care provider has waived the right to appeal a civil penalty; or

2. Civil penalty has been upheld on appeal.

Section 3. Level 1 Quality Rating Certificate [~~One (1)~~] Requirements. (1) A Type II center or family child care home:

(a) Shall not be allowed to hold a Level 1 quality rating certificate for more than [~~If, after~~] two (2) years; [~~of participation as a Level one (1) provider, the provider has not achieved a rating level above level one (1), the certificate shall expire. The provider~~]

(b) May reapply for participation six (6) months after expiration of the Level 1 [~~one (1)~~] quality rating certificate.

(2) A Type II center or family child care home participating in STARS and holding a Level 1 quality rating certificate [~~Level one (1) participant~~] shall:

(a) Post prominently in the home, and maintain compliance with the:

1. Capacity requirements established in 922 KAR 2:100, Section 10, if the STARS participant is a certified family child care [~~child care~~] home provider; or

2. Following staff-to-child ratios if the participant is a licensed Type II center [~~provider~~]:

Type II child day care home	
Age of Children	Ratio
Birth to 1 year	1:5
1 to 2 years	1:6
2 to 3 years	1:10
3 and older	1:12

(b) If the participant is a:

1. Certified family child care [~~child care~~] home [~~provider~~], comply with the requirements set forth in 922 KAR 2:100; or

2. Licensed Type II center [~~provider~~], comply with the requirements established in:

a. 922 KAR 2.090, Child care center licensure;

b. 922 KAR 2:110, Child care facility provider requirements; and

c. 922 KAR 2:120, Child care facility health and safety standards;

(c) Attend an overview of STARS [~~the program~~] prior to program participation;

(d) Agree to an [~~a curriculum~~] assessment in which the environment rating scale [~~FDCRS~~] shall be used under the following conditions:

1. The environment rating scale [~~FDCRS~~] shall be conducted by the child care provider with assistance, if requested, from the cabinet or its designee [~~a resource and referral agency staff person~~] within the first twelve (12) months of participation in the program;

2. The child care provider shall not be required to achieve [~~Participation as a level one (1) provider shall not require achievement of~~] a specific score on the environment rating scale [~~FDCRS~~]; and

3. Upon completion of the environment rating scale [~~FDCRS~~] during the second year of certification at [~~participation as~~] a Level 1 quality rating [~~one (1) provider~~], the child care provider shall develop a written plan, with assistance from the cabinet or its designee, if requested [~~and referral agency staff person~~], for improved performance in each area identified by the environment rating scale [~~FDCRS~~] as needing improvement;

(e) Post in a prominent area, the child care provider's:

1. Planned program of activities; and

2. Daily schedule;

(f) Coordinate at least one (1) annual activity involving parental or family participation;

(g) Maintain a written child care agreement with each child's parent or custodian, including the name of each person designated by the parent to pick up the child;

(h) Maintain a written description of services that includes:

1. Current rates for child care;

2. Hours of operation;

3. A plan for daily communication with each child's parent or custodian; and

4. Policy regarding:

a. Late fees;

b. Holidays;

c. Vacation;

d. Illness; and

e. How an arrangement shall be made for an individual, other than one (1) previously designated by the parent, to pick up a child; [.]

(i) [~~Not have an immediate closure, denial of recertification or re-licensure, or pending suspension or revocation action against the provider's certificate or licence to operate;~~

~~(j) [In the case of a Type II child care home,] Pay any civil penalty levied against the child care provider if the:~~

~~1. Child care provider has waived the right to appeal a civil penalty; or~~

~~2. Civil penalty has been upheld on appeal;~~

~~(k)~~] Comply with 922 KAR 2:160, Child Care Assistance Program (CCAP); and

(j) [~~(i)~~] In the case of a:

1. Certified family child care [~~child care~~] home [~~provider~~], develop and implement a written plan for obtaining annual training required by KRS 199 8982(2); or

2. Licensed Type II center [~~provider~~], develop and implement a written annual plan for obtaining training for each employee, including the licensee.

Section 4. Level 2 Quality Rating Certificate [~~Two (2)~~] Requirements. A Type II center or family child care home participating in STARS and holding a Level 2 quality rating certificate [~~Level two (2) participant~~] shall:

(1) Meet the requirements of Section 3(2)(a) through [~~to~~] (c), (e), and (g) through (l) of this administrative regulation;

(2) Coordinate at least two (2) annual activities that involve parental or family participation;

(3) Provide documentation of a written plan for parental or family involvement;

(4) Achieve an average score of at least three (3) on the environment rating scale portion of the STARS rating visit [~~FDCRS~~];

(5) If the child care provider achieves an average score of three (3) on the environment rating scale portion of the STARS rating visit, [~~FDCRS~~] develop a written plan, with assistance from the cabinet or its designee [~~a resource and referral agency staff person~~], for improved performance on subsequent environment rating scale [~~scales~~];

(6) Achieve an average score of at least four (4) on the environment rating scale portion of the STARS rating visit [~~FDCRS~~] by the fourth year of certification at [~~participation as~~] a Level 2 quality rating [~~two (2) participant~~];

(7) Maintain an overall average score of four (4) on the environment rating scale portion of the STARS rating visit [~~FDCRS~~] for each year beyond the fourth year of certification at [~~participation as~~] a Level 2 quality rating [~~two (2) participant~~];

(8) Review and sign the "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist" during the STARS rating visit;

(9) Read to the children daily;

(10) [~~(9)~~] Ensure that at least one (1) person [~~is~~] on duty [~~who~~] is certified in infant and:

(a) Child cardiopulmonary resuscitation; and

(b) Child first aid;

(11) [~~(10)~~] Meet the training requirement as follows:

(a) If the STARS participant is a:

1. Certified family child care [~~child care~~] home [~~provider~~], complete three (3) clock hours of early care and education [~~state agency approved child development~~] training approved by the

cabinet or its designee annually, beyond the six (6) hour requirement specified in 922 KAR 2:100;

2. Type II center [~~child care home~~], the licensee and each staff person shall complete three (3) clock hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(b) Obtain a Commonwealth Child Care Credential;

(c) Have a Child Development Associate's Credential;

(d) [~~After July 1, 2004,~~] Complete the [~~family child care~~] Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;

(e) Have a Montessori Certificate; or

(f) Have an associate or higher level of education in:

1. Interdisciplinary early childhood education;

2. Early childhood special education;

3. Early childhood education;

4. Early care and education [~~childhood development~~];

5. Elementary education for teaching kindergarten through fourth grade, if the provider cares for school-age children; or

6. A related degree approved by the Early Childhood Development Authority;

(12) [~~(11)~~] In the case of a Type II center [~~child care home~~], comply with the provisions of:

(a) 11 KAR 16.040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16.060, Early Childhood Development Scholarship Program system of monetary incentives; and

(13) [~~(12)~~] Provide proof that a recordkeeping system is maintained, including:

(a) Documentation of child care business expenses; and

(b) Income from the business.

Section 5. Level 3 Quality Rating Certificate [~~Three (3)~~] Requirements. A Type II center or family child care home participating in STARS and holding a Level 3 quality rating certificate [~~Level three (3) participant~~] shall:

(1) In the case of a:

(a) Certified family child care home [~~provider~~], have an assistant if the provider cares for six (6) children and more than [~~or~~]:

1. [~~Fewer children and more than~~] Three (3) are infants; or

2. [~~More children and more than~~] Three (3) children are under the age of twenty-four (24) months;

(b) Type II center [~~child care home~~], meet the following staff-to-child ratios:

Age of Children	Ratio
Birth - 1 year	1:4
1 to 2 years	1:5
2 to 3 years	1:8
3 and older	1:12

(2) Meet the requirements of Section 3(2)(a), through [~~(b),~~] (c), and (e) through [~~(g), (h), (i), (j), (k), and~~] (l) of this administrative regulation;

(3) Coordinate at least three (3) annual activities involving parental or family participation;

(4) Achieve an average score of at least 4.5 on the environment rating scale portion of the STARS rating visit [~~FDCRS~~];

(5) Achieve a score of at least five (5) [~~or "not applicable"~~] on the environment rating scale portion of the STARS rating visit [~~FDCRS item~~] pertaining to the use of television;

(6) Review and sign the "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist" during the STARS rating visit;

(7) Meet the requirements of Section 4(3), (9), (10), (12), and (13) [~~(8), (9), (11), and (12)~~] of this administrative regulation;

(8) [~~(7)~~] Provide each parent or custodian with a:

(a) Written daily report for a child under two (2) years of age; and

(b) Handbook containing a description of the provider's policies;

(9) [~~(8)~~] Meet the training requirement as follows:

(a) A certified family child care [~~child care~~] home [~~provider~~] shall:

1. Complete eighteen (18) clock hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually; or

2. Obtain a higher level of education as specified in Section 4(10)(b) through (f) of this administrative regulation; and

3. By the fourth year of participation in the STARS Program, have obtained a Child Development Associate's Credential or higher level of education as specified in Section 4(11)(d) through (f) [~~(10)(d) through (f)~~] of this administrative regulation.

(b) A Type II center [~~child care home licensee~~] shall:

1. Ensure that each staff person:

a. Completes eighteen (18) clock hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually; or

b. Has a higher level of education described in Section 4(11)(b) through (f) [~~(10)(b) through (f)~~] of this administrative regulation; and

2. Ensure that the director:

a. Completes twenty-one (21) clock hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually; or

b. Has a higher level of education as specified in Section 4(11)(b) through (f) [~~(10)(b) through (f)~~] of this administrative regulation; and

3. By the fourth year of participation in STARS [~~the program~~], have obtained a Child Development Associate's Credential or higher level of education as specified in Section 4(11)(d) through (f) [~~(10)(d) through (f)~~] of this administrative regulation; and

(10) [~~(9)~~] Ensure that each assistant has:

(a) Attended basic orientation training; and

(b) Obtained three (3) hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually.

Section 6. Level 4 Quality Rating Certificate [~~Four (4)~~] Requirements. A Type II center or family child care home participating in STARS and holding a Level 4 quality rating certificate [~~Level four (4) participant~~] shall:

(1) Not exceed nine (9) children if [~~in the case of~~] a certified family child care [~~child care~~] home [~~provider, have a maximum capacity not to exceed nine (9) children~~];

(2) Meet the requirements of Section 3(2)(a) through [~~to~~] (c), (e), and (g) through (l) of this administrative regulation;

(3) Coordinate at least four (4) annual activities involving parental or family participation;

(4) Meet the requirements of Section 4(3), (9), (10), (12), and (13) [~~(8), (9), (11), and (12)~~] of this administrative regulation;

(5) Meet the requirements of Section 5(1), (5), (8) and (10) [~~(7), and (9)~~] of this administrative regulation;

(6) Achieve an average score of at least 5.5 on the environment-rating scale portion of the STARS rating visit [~~FDCRS~~];

(7) Review and sign the "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist";

(8) Be accredited by:

(a) The National Association for Family Child Care; or

(b) An organization approved by the Early Childhood Development Authority;

(9) [~~(8)~~] Show proof of membership in an early childhood professional organization that has national, multi-state, regional, or statewide affiliation; and

(10) [~~(9)~~] Meet the following relevant training requirement:

(a) A child care provider shall:

1. Have a higher level of education as specified in Section 4(11)(c) through (f) [~~(10)(c) through (f)~~] of this administrative regulation; and

2. [~~After July 1, 2004,~~] Complete the [~~family child care~~] Director's Credential or an equivalent credential approved by the Early Childhood Development Authority; and[~~-~~]

(b) Each staff person employed by a Type II center [~~child care home~~] shall:

1. Complete twenty-one (21) clock hours of early care and education [~~state agency approved child development~~] training approved by the cabinet or its designee annually; or

2. Have a higher level of education as specified in Section 4(11)(b) through (f) [~~(10)(b) through (f)~~] of this administrative regu-

lation.

Section 7. STARS [Star] Achievement and Quality Incentive Awards. (1) To the extent that funds are available, [A one (1) time participation award of $100 shall be provided, to the extent that funds are available, to a provider who enters the program as a Level one (1) participant.

(2)] a one (1) time STARS [star] achievement award shall be awarded [, to the extent that funds are available,] according to the following chart:

Level 1	Level 2	Level 3	Level 4
$100	$250	$500	$1,000

(3) If a Type II center or family child care home's [provider's] initial quality rating certificate [level] is a Level 2 or higher [higher than Level two (2)], the provider shall receive a STARS [star] achievement award:

(a) [:] To the extent that funds are available; and [, for each level,]

(b) Beginning at Level 1 [two (2)], up to the provider's rating level.

(4) A provider shall not receive an award for a level more than one (1) time.

(5) [(4)] A quality incentive award shall not be available to a Type II center or family child care home holding a Level I quality rating certificate [Level one (1) participant].

(6) [(5)] The following chart shall be used when calculating the amount of a quality incentive award:

STARS [Star] Level	Amount per month for each child served by the CCAP [Child Care Assistance Program] who is under age 3	Amount per month for each child served by the CCAP [Child Care Assistance Program] who is age 3 and over
Level 2	$10	$9
Level 3	$13	$12
Level 4	$15	$14

(7) [(6)] A quality incentive award shall be:

(a) Awarded to the extent that funds are available; and

(b) Paid [quarterly] to a participating Type II center or family child care home [qualifying participant] that has received a quality rating certificate by the first day of the payment period.

Section 8. Renewal of a Quality Rating Certificate. (1) The cabinet or its designee [state agency] shall notify a participating Type II center or family child care home [participant] at least ninety (90) calendar days before expiration of the center or home's [participant's] quality rating certificate.

(2) A participating Type II center or family child care home [participant] shall submit a DCC-405 written request to the cabinet or its designee [state agency] for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) A quality rating certificate shall be renewed by a quality rating visit:

(a) Annually for a Level 1 rated Type II center or home.

(b) Every two (2) years for a Level 2 rated Type II center or home;

(c) Every three (3) years for a Level 3 rated Type II center or home; and

(d) Every four (4) years for a Level 4 rated Type II center or home. [If the state agency determines that a participant does not meet the rating level standards for which the center is recognized, a provider shall:

(a) Accept a lower rating level; or

(b) Submit a written request to the state agency, within ten (10) calendar days from receipt of a reduced quality rating certificate, for an informal dispute resolution meeting.

1. The request shall be accompanied by a request for an administrative hearing pursuant to KRS Chapter 13B.

2. If an appellant is satisfied with the outcome of the informal dispute resolution process, the administrative hearing shall be cancelled.

3. Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a demoted rating level.]

Section 9. Conditions Requiring Reevaluation. Reevaluation of a participating Type II center or family child care home's quality [participant's] rating certificate and associated level shall be conducted if the:

(1) Location of the center or home [a family child care] [provider] changes; [or]

(2) Center or home [Participant] requests a reevaluation in accordance with Section 2(4) of this administrative regulation; or

(3) Cabinet or its designee determines a need to reassess the center or home's STARS participation or quality rating certificate level due to reports or findings related to a reduction in the center or home's quality of care or services.

Section 10. Conditions Requiring Revocation. (1) A Type II center or family child care home's [participant's] quality rating certificate shall be revoked for:

(a) Closure pursuant to KRS 13B.125;

(b) Denial of recertification or relicensure;

(c) A pending suspension or revocation action taken against the center or home's [provider's] certificate or license to operate;

(d) Failure to comply with the requirements of 922 KAR 2:160, [or]

(e) [In the case of a Type II child day care home,] Failure to:

1. Comply with payment of a civil penalty levied against the center, if:

a. The center waived the right to appeal the civil penalty; or

b. The civil penalty has been upheld on appeal; or

2. Make payment arrangements for a civil penalty within sixty (60) days and comply with that arrangement; if:

a. [1.] The center waived the right to appeal the civil penalty; or

b. [2.] The civil penalty has been upheld on appeal; [or]

1. The provider waived the right to appeal the civil penalty; or

2. The civil penalty has been upheld on appeal;

(f) Two (2) or more civil penalties levied against the center or home in the previous twelve (12) months, in accordance with KRS 199.990; or

(g) A change in ownership.

(2) Payment of a quality incentive award shall cease upon revocation of a quality rating certificate.

Section 11. Quality Rating Certificate. A quality rating certificate shall be returned to the cabinet or its designee [state agency] if:

(1) The certificate is revoked;

(2) The certificate is not renewed; or

(3) The center or home [provider] voluntarily withdraws from the STARS [program].

Section 12. Appeals. (1) If the cabinet or its designee determines that a participating Type II center or family child care home does not meet the rating level standards for which it is certified, the center or home shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 1:320, Section 2(11) [(10)].

(2) Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a reduced quality rating certificate level.

(3) [If a participant appeals revocation of a quality rating certificate for a negative action described in Section 10(1)(a) through (c) of this administrative regulation, the quality rating appeal shall be combined with appeal of the negative action.

(2)] If denial, suspension, or revocation of a Type II center or family child care home's [provider's] certificate or license to operate is reversed upon appeal, the:

(a) Center or home may reapply for participation in the STARS; or

(b) Cabinet may reinstate a center or home's STARS quality rating certificate and associated level if the:

1. Center submits a request for reinstatement; and

2. Center's STARS quality rating certificate and licensure has not expired [program].

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-400, Level 1 Rating Certificate Application", edition 07/06;

(b) "DCC-401, STARS for KIDS NOW-Level 1 Standards Checklist", edition 07/06,

(c) "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist", edition 07/06;

(d) "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist", edition 07/06;

(e) 'DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist", edition 07/06;

(f) "DCC-405, STARS for KIDS NOW-Rating Visit Request Form", edition 07/06. ~~["Application for Level One (1) Rating Certificate Certified Family Child Care Homes, edition July 2002",~~

~~(b) Application for Level One (1) Rating Certificate Licensed Type II Family Child Care Homes, edition July 2002"~~

~~(c) Level One (1) Standards, edition July 2002";~~

~~(d) "STAR Rating Visit Request Form for Certified Family Child Care Homes, edition July 2002" and~~

~~(e) STAR Rating Visit Request Form for Licensed Type II Family Child Care Homes, edition July 2002".]~~

(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.~~

~~(3)~~] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: October 9, 2006
FILED WITH LRC: October 9, 2006 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: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type II licensed child care centers and certified family child care providers, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a voluntary quality rating system for licensed child care centers and certified family child care providers and related monetary incentive payments to those centers and homes.

(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 implementing a voluntary quality-based graduated rating system for child care providers, agency timeframes for the review of quality ratings, an appeals process under KRS Chapter 13A, a process for the reevaluation of quality ratings, and related monetary incentives for child care providers. The administrative regulation further complies with quality improvement initiatives required as a part of the State's eligibility for the Child Care Development Block Grant.

(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 statutes by developing a program of monetary incentives tied to participation in a quality rating system for child care providers.

(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 modifies the existing administrative regulation's renewal process to align the process's timeframes and related child care provider requirements with those suggested by the National Association for the Education of Young Children. The amendment also makes other technical corrections to ensure greater clarity for the public and compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align the frequency of onsite assessments for licensed child care centers and certified family child care homes that request participation in the STARS for KIDS NOW Program, an incentive-based and graduated quality rating system, with the best practices of the National Association for the Education of Young Children. In 45 C.F.R. 98.51, the U.S. Department of Health and Human Services requires Kentucky to set aside a percentage of the federal Child Care and Development Fund Block Grant, the federal funding source for Kentucky's Child Care Assistance Program, to improve the quality of child care. The amendment ensures that the Department for Community Based Services has the capacity to improve the quality of child care by servicing more centers and providing more intensive technical assistance to them. In addition to the overall improvement of child care centers' programs, health and safety standards, the amendment eliminates the possibility of any lost federal or state funding available to the STARS for KIDS NOW Program and Kentucky's child care program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning the STARS for KIDS NOW Program with national best practice standards and ensuring departmental capacity to service more centers and provide more intensive technical assistance to them.

(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 aligning departmental practices with national best practice standards and clarifying those practices and related provider requirements for he public.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: At this time, 536 licensed child care centers and 134 family child care homes are participating in the STARS for KIDS NOW 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: STARS rated providers will be impacted by the amendment to this administrative regulation in that they will be subject to renewal and provider requirements more consistent with national best practices and have available to them more intensive technical assistance from the department. The renewal timeframes for high level providers will be lengthened; thus, higher leveled providers will be subject to fewer renewal processes. The Department for Community Based Services is also considering random spot checks of providers, without notice, and submission of an annual self assessment instrument as recommended by NAEYC.

(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: Child Care Development Grant, Temporary Assistance for Needy Families Block Grant, General Fund Dollars, Tobacco Dollars, and Restricted Dollars.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any fees, directly or indirectly attached to the amendment to this administrative regulation.

(9) TIERING: Is tiering applied? Policy is applied in a like manner for all licensed child care centers and family home providers

across the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619.

2. State compliance standards., KRS 194A.050, 199.8941, and 199.8943.

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATE BOARD OF ELECTIONS
(Amendment)

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

RELATES TO: KRS 117.079, 117.085, 369.107[(1)], and 42 U.S C. 1973[ff-1]
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S C 1973ff-1
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S C. 1973ff, authorizes the Department of Defense to implement an interim voting assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing e-mail technology. This administrative regulation implements IVAS.

Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card [Postcard Absentee Ballot] Application, Standard Form 76, electronically mailed to the county clerk from IVAS.

(2) "Instructions to voter sheet" means the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot, SBE 46A [form containing instructions for voting].

(3) "IVAS" means the Department of Defense Interim Voting Assistance System.

(4) "Registered voter" means a resident of Kentucky who is eligible to vote and is a deployed member of the Armed Forces of the U.S.

(5) "Voter verification sheet" means the form the registered voter signs and the voter assistance oath.

Section 2. Processing a Completed Application by Electronic Mail. (1) If the absentee ballot application is received by electronic mail from IVAS less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the completed absentee ballot application is received by electronic mail from IVAS not less than seven (7) days before the election, then the county clerk shall affix his seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's [voter] eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy in Portable Document Format (PDF) of the original absentee ballot. The original absentee ballot is then marked "electronically mailed to IVAS" and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent via electronic mail to IVAS, along with the Instructions to voter sheet and the voter verification sheet.

Section 3. Voter's Instructions on Completing an Electronic Absentee Ballot Received From IVAS. (1) When a voter receives an absentee ballot via electronic mail, the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on election day, to the county clerk through the mail in order to be counted.

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

(a) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005) ["Federal Post Card Application, Standard Form 76A (1-2000)];

(b) SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot" (December 2005 edition) ["Instructions to Voter Sheet, SBE 46A (9/04)"]; and

(c) SBE 46B - "Voter Verification Sheet" (December 2005 edition) ["Voter Verification Sheet, SBE 46B (9/04)]."

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

TREY GRAYSON, Chair
GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: September 19, 2006
FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2006, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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 November 30, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kathryn H. Dunnigan, General Counsel, Kentucky State 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: Kathryn H. Dunnigan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079, and KRS 117.085 to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel who are deployed overseas, many times on short notice, causing delays in regular mail service and access to facsimile machines in some cases is impractical.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the most recent versions of the Federal Post Card Application, the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot Sheet, and the Voter Verification Sheet.

(b) The necessity of the amendment to this administrative regulation: This amendment is also necessary to update the latest edition of the forms incorporated by reference that carry out these procedures established by this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the latest edition of the forms incorporated by reference that carry out these procedures established by this regulation in accordance with KRS 117.015(1), 117.079 and 42 U.S.C. 1973ff-1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the elections officials with the most recent versions of the federal forms and the state forms to assist in the process established by this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are members of the Armed Forces and deployed overseas and all county clerks in counties that have electronic mail capabilities to enter the Department of Defense Interim Voting Assistance System. There are approximately 72 counties that have the capability of entering the system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The county clerks will have to establish a link to the Interim Voting Assistance System Web site, a user id and password to participate in the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The costs for the program are minimal and already included in the existing budget of these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The county clerks and the voters who are members of the Armed Forces and deployed overseas will benefit from the expedited absentee voting process established by this regulation.

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

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All county clerks in counties that have electronic mail capabilities to enter the Department of Defense Interim Voting Assistance System. There are sixty-eight (68) counties that have the capability of entering the system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 117.015(1), 117.079 and. 42 U S C. 1973ff-1

4. Estimate the effect of this administrative regulation on the expenditures and revenues of the state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenues for the local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenues for the local governments.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and will only be incurred during the several months leading up to each general federal election.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U S C. 1973ff-1

(2) State compliance standards: KRS 117.015(1) and 117.079 authorize the board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements the Department of Defense Interim Voting Assistance System to expedite the absentee voting process for deployed members of the Armed Services of the United States, using existing e-mail technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U S.C. 1973ff-1.

(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. Not applicable.

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(Amendment)

45 KAR 1:030. Audits of sheriffs' tax settlements.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210
STATUTORY AUTHORITY. KRS 43.075
NECESSITY, FUNCTION, AND CONFORMITY: KRS 43 075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for sheriffs' tax settlement audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each sheriff's tax settlement shall be conducted and reported in accordance with: (1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);
(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 5(1)(b); and
(3) The "Audit Guide for Sheriffs' Tax Settlements," issued by the Auditor of Public Accounts.

Section 3. Auditor's Independent Judgment The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective (1) The primary objective of an audit of a sheriff's tax settlement shall be an audit report that provides an opinion on whether the financial statement of a sheriff's tax settlement presents fairly, in all material respects, the taxes charged, credited, and paid during the tax year.
(2) An auditor shall make tests sufficient to determine whether:
(a) The sheriff has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;
(b) Receipts have been accurately recorded by source;
(c) Expenditures have been accurately recorded by payee; and
(d) The sheriff has complied with all other legal requirements relating to the management of public tax funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for sheriffs' tax settlement audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.
(2) A sheriff shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:
(a) Release of an audit report; and
(b) Payment of fees for a sheriff's tax settlement audit report.
(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Sheriff's Tax Settlements" and this administrative regulation, shall disqualify him from conducting sheriff's tax settlement audits.

Section 6. Incorporation by Reference. (1) The "Audit Guide for Sheriffs' Tax Settlements," Auditor of Public Accounts, September 15, 2006 [2004], is incorporated by reference.
(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p m.

CRIT LUALLEN, Auditor of Public Accounts
APPROVED BY AGENCY: October 10, 2006
FILED WITH LRC: October 10, 2006 at Noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Wednesday, November 22, 2006, at 10 a m., at the office of the Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, November 15, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through Thursday, November 30, 2006. 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: Ellen M. Hesen, General Counsel, Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601; phone (502) 573-0050, fax (502) 573-0067.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen M. Hesen
(1) Provide a brief summary of·
(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43.070(1)(b) or 64.810.
(b) The necessity of this administrative regulation: KRS 43.075(1) requires the Auditor of Public Accounts to promulgate this administrative regulation.
(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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43.070(1)(b) or 64 810.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of sheriffs' tax settlements performed under KRS 43 070(1)(b) or 64 810.
(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 this existing administrative regulation by updating the "Audit Guide for Sheriffs' Tax Settlements," incorporated by reference.
(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by updating the "Audit Guide for Sheriffs' Tax Settlements," incorporated by reference, is necessary to conform this administrative regulation with current sheriff tax settlement audit practice and procedure.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075(1), by updating current standards and procedures for conducting, and formats for reporting, sheriffs' tax settlement audits performed under KRS 43.070(1)(b) or 64.810.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075(1), by updating current standards and procedures for conducting, and uniform formats for reporting, all sheriffs' tax settlement audits performed under KRS 43.070(1)(b) or 64.810.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The sheriffs in all 120 Kentucky counties, certified public accountants licensed in Kentucky, and the Auditor of Public Accounts, are affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates in any way that differs from the impact the original administrative regulation had on the groups: the sheriffs' tax settlements will continue to be audited using uniform standards and procedures for conducting, and uniform formats for reporting, sheriffs' tax settlement audits; and the certified public accountants and Auditor of Public Accounts will continue to audit using uniform standards and procedures for conducting, and uniform formats for reporting, sheriffs' tax settlement audits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Audit Guide for Sheriffs' Tax Settlements" to follow in completing all audits of sheriffs' tax settlements conducted pursuant to KRS 43.070 or KRS 64.810.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency receipts of payments by the fiscal courts of the actual expense of the sheriffs' tax settlement audits, per KRS 43 070(3).

(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 change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes any fees, nor increases any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all sheriffs' tax settlements are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, sheriffs' tax settlement audits.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect sheriffs and county fiscal courts in Kentucky's 120 counties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: The only state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation is KRS 43.075(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: The effect of this amended administrative regulation on the expenditures and revenues of sheriffs and fiscal courts for the first full year the amended regulation is to be in effect is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any revenue for the sheriffs and fiscal courts for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate any revenue for the sheriffs and fiscal courts for subsequent years

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of sheriffs and fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of sheriffs and fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other Explanation: None

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(Amendment)

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070, 43 075, 64.530, 64.810, 68.210
STATUTORY AUTHORITY: KRS 43.075
NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for county fee officials' audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds administered by each county fee official shall be conducted and reported in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1.300, Section 5(1)(b); and

(3) The "Audit Guide for County Fee Officials," issued by the Auditor of Public Accounts.

Section 3. Auditor's Independent Judgment. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fee official shall be an audit report that provides an opinion on whether the financial statements of the fee official present fairly, in all material respects, the receipts, disbursements, and excess fees.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee official has complied with the requirements of the uniform system of accounts adopted under KRS 64.530 and 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The fee official has complied with all other legal requirements relating to the management of public funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fee officials' audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fee officials' audit.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for County Fee Officials" and this administrative regulation shall disqualify him or her from conducting fee officials' audits.

Section 6.. Incorporation by Reference. (1) The "Audit Guide for County Fee Officials," Auditor of Public Accounts, September 15, 2006 [2004], is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Auditor of Public Accounts

APPROVED BY AGENCY: October 10, 2006

FILED WITH LRC. October 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, November 22, 2006, at 10 a.m., at the office of the Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, November 15, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through Thursday, November 30, 2006. 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: Ellen M. Hesen, General Counsel, Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601; phone (502) 573-0050; fax (502) 573-0067.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen M. Hesen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43 070(1)(b) or 64.810.

(b) The necessity of this administrative regulation: KRS 43.075(1) requires the Auditor of Public Accounts to promulgate this administrative regulation.

(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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43.070(1)(b) or 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county fee officials performed under KRS 43.070(1)(b) or 64.810.

(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 this existing administrative regulation by updating the "Audit Guide for County Fee Officials," incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by updating the "Audit Guide for County Fee Officials," incorporated by reference, is necessary to conform this administrative regulation with current county fee officials' audit practice and procedure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075(1), by updating current standards and procedures for conducting, and formats for reporting, county fee officials' audits performed under KRS 43.070(1)(b) or 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075(1), by updating current standards and procedures for conducting, and uniform formats for reporting, all county fee officials' audits performed under KRS 43.070(1)(b) or 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The sheriffs and county clerks in all 120 Kentucky counties, certified public accountants licensed in Kentucky, and the Auditor of Public Accounts, are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates in any way that differs from the impact the original administrative regulation had on the groups: the county fee officials will continue to be audited using uniform standards and procedures for conducting, and uniform formats for reporting sheriffs' tax settlement audits; and the certified public accountants and Auditor of Public Accounts will continue to audit county fee officials using uniform standards and procedures for conducting, and uniform formats for reporting, audits of county fee officials.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Audit Guide for County Fee Officials" to follow in completing all audits of county fee officials conducted pursuant to KRS 43.070 or 64.810.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency receipts of payments by the fiscal courts of the actual expense of the county fee officials' audits, per KRS 43.070(3).

(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 change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes any fees, nor increases any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all county fee officials are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, county fee officials' audits.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect sheriffs, county clerks, and county fiscal courts in Kentucky's 120 counties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: The only state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation is KRS 43.075(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: The effect of this amended administrative regulation on the expenditures and revenues of sheriffs, county clerks, and fiscal courts for the first full year the amended regulation is to be in effect is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any revenue for the sheriffs, county clerks, and fiscal courts for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate any revenue for the sheriffs, county clerks, and fiscal courts for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of sheriffs, county clerks, and fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of sheriffs, county clerks, and fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other Explanation: None

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in counties, budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Sec. 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Sec. 5(1)(b); and

(3) "Audit Guide for Fiscal Court Audits," issued by the Auditor of Public Accounts[~~, September 15, 2004~~].

Section 3. Auditor's Independent Judgment. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court present fairly, in all material respects, the:

(a) Financial position of the governmental activities, business type activities, aggregate discretely presented component units, each major fund and the aggregate remaining fund information; and

(b) Changes in financial position and cash flows.

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act of 1984, the Single Audit Act Amendments of 1996, and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole: and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Fiscal Court Audits" and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Audit Guide for Fiscal Court Audits," Auditor of Public Accounts, September 15, 2006 [~~2004~~], is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 105 Sea Hero Road Suite 2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Auditor of Public Accounts
APPROVED BY AGENCY: October 10, 2006
FILED WITH LRC: October 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, November 22, 2006, at 10 a.m., at the office of the Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, November 15, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through Thursday, November 1, 2006. 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: Ellen M. Hesen, General Counsel, Auditor of Public Accounts, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601; phone (502) 573-0050, fax (502) 573-0067.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen M. Hesen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the funds contained in county budgets (county fiscal courts) performed under KRS 43.070(1)(b) or 64.810.

(b) The necessity of this administrative regulation: KRS 43 075(1) requires the Auditor of Public Accounts to promulgate this administrative regulation.

(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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the funds contained in county budgets (county fiscal courts) performed under KRS 43.070(1)(b) or 64 810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of the funds contained in county budgets (county fiscal courts) performed under KRS 43.070(1)(b) or 64.810.

(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 this existing administrative regulation by updating the "Audit Guide for Fiscal Court Audits," incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by updating the "Audit Guide for Fiscal Court Audits," incorporated by reference, is necessary to conform this administrative regulation with current county fiscal court audit practice and procedure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075(1), by updating current standards and procedures for conducting, and formats for reporting, county fiscal court audits performed under KRS 43.070(1)(b) or 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075(1), by updating current standards and procedures for conducting, and uniform formats for reporting, all county fiscal court audits performed under KRS 43.070(1)(b) or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 120 Kentucky counties, certified public accountants licensed in Kentucky, and the Auditor of Public Accounts, are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates in any way that differs from the impact the original administrative regulation had on the groups: the county fiscal courts will continue to be audited using uniform standards and procedures for conducting, and uniform formats for reporting, county fiscal court audits; and the certified public accountants and Auditor of Public Accounts will continue to audit county fiscal courts using uniform standards and procedures for conducting, and uniform formats for reporting, audits of county fiscal courts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Audit Guide for Fiscal Court Audits" to follow in completing all audits of county fiscal courts conducted pursuant to KRS 43.070 or 64.810.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency receipts of payments by the fiscal courts of one-half the actual expense of the county fiscal court audits, per KRS 43 070(3).

(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 change in the amendment of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes any fees, nor increases any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all county fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, county fiscal court audits.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect county fiscal courts in Kentucky's 120 counties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: The only state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075(1). The only federal statute that requires or authorizes the action taken by the administrative regulation is 31 U.S.C. 7501-7507, and the federal regulations, if any, promulgated thereunder.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: The effect of this amended administrative regulation on the expenditures and revenues of county fiscal courts for the first full year the amended regulation is to be in effect is neutral, resulting in no increase or decrease in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any revenue for the county fiscal courts for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate any revenue for the county fiscal courts for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of county fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of county fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other Explanation: None

TEACHERS' RETIREMENT SYSTEM
(Amendment)

102 KAR 1:038. Fractional service year for members initially employed on a full-time basis.

RELATES TO: KRS 161.545

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.545 provides that members of the Teachers' Retirement System may make contributions for any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees. This administrative regulation establishes guidelines for accepting contributions and granting service credit for members employed for less than a full school year.

Section 1. Members employed in regular full-time positions under contracts that require service for every day of a full contract year that would normally be accredited with one (1) full year of service credit, but who provide service for less than the regular contract year shall receive a proportional fraction of a year of service credit computed to the nearest 100th, except that members who are employed for the first one-half (1/2) or more of a regular contract year shall have the privilege of purchasing credit for the balance of the contract year. This privilege shall not be exercised more than one (1) time in any three (3) year period. Payment of contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.

Section 2. Members who are employed in regular full-time positions under contracts that require service for every day of a full contract year that would normally be accredited with one (1) full year of service credit and who are so employed at the beginning of a school year and who are so employed for at least seven-tenths (7/10) of any school year may make contributions based upon the equivalent annual contract salary and receive a full year of service credit. The contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.

Section 3. Members who are employed after the beginning of a regular contract year shall not be eligible to obtain credit for service time that occurred prior to their employment.

Section 4. Members regularly employed on a normal full-time basis under contracts that require service for every day of a full contract year that would normally be accredited with one (1) full year of service credit and who are so employed at the beginning of a fiscal year for at least one (1) complete pay period may make contributions for the balance of the fiscal year and receive one (1) full year of service credit. The payment of contributions shall be made at the end of the fiscal year next succeeding the year in which the last salary payment was made. The provisions of this section shall be applicable only once in any ten (10) year period.

Section 5. Interest charges of eight (8) percent shall be added to payments made after June 30 of the fractional year.

Section 6. Nothing in this administrative regulation shall be construed as limiting payments made under a bona fide leave of absence as provided in other administrative regulations.

DR. ZELLA WELLS, Chairperson

APPROVED BY AGENCY: September 18, 2006

FILED WITH LRC: October 12, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, at 9 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, General Counsel, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Barnes

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines for purchasing as service credit the balance of fiscal years that would normally have been completed by a member, but for which the member was unable to complete.

(b) The necessity of this administrative regulation: This regulation provides the authorization and procedural details for the purchase of those fiscal years of employment that the member is unable to complete.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.545(1) provides for the purchase of service and leaves as provided in the administrative regulations of the KTRS Board of Trustees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the authorization and procedural detail for the purchase of this time as service credit as contemplated under KRS 161.545(1).

(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 merely add more precise language to clarify the reference to "regular" full-time employment.

(b) The necessity of the amendment to this administrative regulation: Additional wording to the regulation's reference to word "regular" would make its meaning is more clear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.545(1) contemplates that KTRS will promulgate regulations for the purchase of service credit as described above and this amendment would merely make the existing regulation clearer to understand.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will more clearly describe the conditions under which the service credit described above may be purchased.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Members of the retirement system who begin and complete part of a fiscal work year, but are unable to complete the year, and who wish to purchase the balance of uncompleted year as service credit are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not change the substance of the regulation, it merely provides greater clarity and as such there will be no change for affected individuals other than that the regulation will have additional clarity should they wish to read the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There is no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). There are no additional benefits. 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 additional funding is needed for the implementation and enforcement of the proposed administrative 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: No increase in fees or funding will be required.

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

(9) Tiering: Is tiering applied? Tiering is not applicable as the proposed amendment merely adds greater clarity to an existing reference in the regulation. The existing regulation applies equally to all members who are unable to complete a full year of work and receive the full year of service credit that they would have received, but for some interruption.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Under the existing statute and regulation, employers of KTRS members including local school districts, the Department of Education, and five regional universities provide employment information to KTRS so that members can purchase as service credit the balance of uncompleted years of work. The proposed amendment does not change the impact of the existing administrative regulation on these entities.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.545 and 102 KAR 1:038.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There is no additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost in subsequent years.

Note: 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 proposed administrative regulation does generate any additional revenues or expenditures.

TEACHERS' RETIREMENT SYSTEM
(Amendment)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161 640

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.600 requires members who are eligible for retirement to apply for an annuity to receive benefit payments. This administrative regulation sets out procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. Applications for retirement shall be filed on forms incorporated by reference in Section 5 of this administrative regulation.

Section 2. Applications for retirement for service to be effective on July 1 ~~[at the beginning of the next fiscal year]~~ shall be filed on or before June 1. Applications for retirement for service to be effective on June 1 shall be filed on or before May 1. A member eligible to retire may exercise this right during a school year in which he has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement. Applications filed for retirement for service to be effective on dates other than July 1 or June 1 ~~[during the school year]~~ shall be effective as of the first of the month following the date the application is received in the Teachers' Retirement System office.

Section 3. An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date set out in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with that section.

Section 4. Applications for service retirement may be approved by the Board of Trustees with an effective date that is retroactive up to a maximum of three (3) months if the member was not under contract for the period. This provision shall apply to retirements that became effective on or after July 1, 1975.

Section 5. Incorporation by Reference. (1) "Application for Service Retirement, Revised 2006~~[02/03]~~", is incorporated by ref-

erence.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a m. to 5 [4-30] p m.

DR. ZELLA WELLS, Chairperson

APPROVED BY AGENCY: September 18, 2006

FILED WITH LRC: October 12, 2006 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, at 9 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, General Counsel, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the filing of retirement applications and determining effective dates of annuity payments.

(b) The necessity of this administrative regulation. The retirement system as well as its members must have procedures in place for the orderly filing of retirement applications as well as clear guidelines as to when annuity payments may be made.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.600(4) provides that no retirement annuity shall be effective until written application forms are filed with the retirement office in accordance with administrative regulations of the board of trustees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes do not specifically address the procedure for filing retirement applications or determining the effective dates of annuity payments. This administrative regulation adds the needed detail so that these procedures may be implemented.

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

(a) How the amendment will change this existing administrative regulation: This amendment will require members who wish to file for a June 1 retirement date to file their retirement application on or before May 1.

(b) The necessity of the amendment to this administrative regulation: Historically, July 1 has been the most requested retirement date. As such, July 1 retirement dates have required a minimum one-month advance filing deadline so that the retirement applications received for that date can all be adequately processed, thus permitting retirees to receive their first retirement annuity payments on time. June 1, second only to July 1 as the most requested retirement date, is becoming increasingly popular. As such, it is becoming increasingly challenging to adequately process June 1 retirement applications without an minimum advance filing deadline similar to that required for July 1 retirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.600(4) contemplates that the board of trustees promulgating administrative regulations for the filing of retirement applications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide needed additional time to process retirement applications during the second busiest month, thus helping to avoid problems with adequately and timely approving retirement applications and paying retirement allowances. The statutes provide for the filing of retirement applications and contemplate that the retirement system will promulgate such regulations to provide the necessary procedural detail.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All members of the retirement system who wish to file for a June 1 retirement date will be affected by the proposed amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Members who wish to file for a June 1 retirement date will be required to file their retirement applications no later than May 1, instead of before or on June 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There is no cost to members under this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The one-month advance filing deadline will provide time to process paperwork and obtain proper documentation from third parties such as employers and records custodians such as the Department of Vital Statistics. This will help ensure timely processing of retirement applications and payment of retirement allowances.

(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: No additional funding is necessary as there is no additional cost.

(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 amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect increase in fees will be established by the amendment of this administrative regulation.

(9) Tiering: Is tiering applied? Tiering as described under KRS 13A.210 applies to the proposed regulatory amendment only to the extent that the amendment would require a one-month advance filing deadline only for June 1 retirements (in addition to the July 1 retirements already provided for), and not for any of the other less requested retirement dates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local school district personnel or finance officers will be assisting employees retiring on June 1 with retirement paperwork one month earlier than they would under the administrative regulation as it currently exists.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.600(4) and 102 KAR 1:070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation. The proposed amendment is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation. The proposed amendment is revenue neutral.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer the proposed amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer the proposed amendment in subsequent years.

Note: 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 are no additional revenues or expenditures created as a result of the proposed administrative regulation.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:084. Fee schedule regarding physician assistants.

RELATES TO: KRS 311.550(17), (18), 311.560(3), 311.565(1)(a), (t)

STATUTORY AUTHORITY: KRS 311.565(1)(a), (t), (9), (20), (22)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(t) authorizes the board to prescribe and collect reasonable fees and charges for an examination, directory, or the issuance or renewal of a license or permit. KRS 311.567(1) authorizes the board to promulgate administrative regulations necessary to regulate the conduct of physician assistants. This administrative regulation establishes a schedule of fees for relating to physician assistants.

Section 1. Fee Schedule. The board shall charge the following fees:

(1) Application for a license [~~certificate~~], $100.

(2) Application for a temporary license [~~certificate~~], fifty (50) dollars.

(3) Conversion from a temporary license [~~certificate~~] to a license [~~certificate~~], fifty (50) dollars.

(4) Fee for biennial renewal of license [~~certificate~~], $150 [~~100~~].

(5) Penalty fee for late renewal of license [~~certificate~~], fifty (50) dollars.

(6) Issuance of a duplicate license certificate, ten (10) dollars.

(7) Application by a physician for approval to employ a physician assistant, $100.

(8) Application to transfer the responsibility of the supervising physician to an approved supervising physician agent, fifty (50) dollars.

(9) Fee for emergency permit, fifteen (15) dollars.

(10) Fee for supervising physician of physician assistant holding an emergency permit, fifteen (15) dollars.

(11) Fee for registration of inactive license, $150.

DANNY M. CLARK, M.D., President

APPROVED BY AGENCY: October 10, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2006 at 10:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 November 30, 2006. 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: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment will increase the fee for biennial renewal of license and establishes fees for the reregistration of an inactive license and verification of state license to another licensing agency.

(b) The necessity of this administrative regulation: Increases fee for biennial renewal of license and establishes fees for reregistration of an inactive license and for verification of licensure to licensing agency of another jurisdiction

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment meets statutory requirements by setting forth necessary increases in fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment increases the fee for biennial renewal of license and establishes fees for reregistration of an inactive license and for verification of licensure to licensing agency of another jurisdiction.

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

(a) How the amendment will change this existing administrative regulation; This amendment increases the fee for biennial renewal of license and establishes fees for reregistration of an inactive license and for verification of licensure to licensing agency of another jurisdiction.

(b) The necessity of the amendment to this administrative regulation; This amendment is necessary to increase fees for biennial renewal of license and for establishing fees for reregistration of an inactive license and for verification of licensure to licensing agency of another jurisdiction.

(c) How the amendment conforms to the content of the authorizing statutes; This amendment meets statutory requirements by setting forth necessary increases in fees.

(d) How the amendment will assist in the effective administration of the statutes. This amendment increases the fee for biennial renewal of license and establishes fees for registration of an inactive license and for verification of licensure to licensing agency of another jurisdiction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 70 applicants each year and approximately 730 physician assistants currently licensed in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with biennial renewal of license and reregistration application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Biennial renewal of license fee will be increased to $150. Reregistration of inactive license will be $150. A charge of $10 will be assessed for verification of licensure to licensing agency of another jurisdiction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit because the Board will be able to provide more efficient services to the entities identified above.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: Funding comes directly from applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The applicant will be responsible for the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will increase the fee for biennial renewal of license and will establish a fee for reregistration of an inactive license and verification of state license to another licensing agency.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, part or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), (t), (9), (20), (22).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $54,675 for biennial renewal of license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

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

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky

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

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a [~~an original~~] favorable educational credentials evaluation report from a credentialing agency that [~~who~~] uses the appropriate edition of the "Coursework Evaluation Tool" copyrighted by Federation of State Boards of [~~Foreign Credentialing Commission on~~] Physical Therapy (FSBPT[~~FCCPT~~]);

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the TOEFL® Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) [~~(2) Has graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned a degree substantially equivalent to a program in physical therapy accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);~~

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

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

~~(5) Comply with KRS 327.060(1)(b)(9);~~

~~(6)~~] Submits a satisfactorily-completed application and appropriate fee as required by [~~201 KAR 22:040 and~~] 201 KAR 22:135;

(d) [~~(7)~~] Has successfully completed a minimum of[~~:~~

~~(a) Not less than~~] three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days; [~~or~~

~~(b) Three (3) months of not less than 390 hours of supervised practice in a state with credentialing requirements at least compa-~~

~~rable to those of Kentucky. Evidence of that experience in a comparable facility outside Kentucky shall be in writing confirming successful completion and satisfactory performance,~~] and

(e) [~~(8)~~] Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant for credentialing by examination, or an applicant who has not yet satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(e) of this administrative regulation if the applicant [~~practice under the supervision of a designated Kentucky credentialed therapist if he or she~~] has:

(a) Completed the requirements of Section 1(2)(a) through (d) [~~(1) to (6)~~] of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant:

(a) Fails to obtain a passing score on the examination;

(b) Fails to complete the scheduled examination within the initial sixty (60) day eligibility; or

(c) Has not satisfactorily completed the supervised practice within six (6) months [~~All requirements for credentialing shall be completed within six (6) months from the beginning of the supervised practice. If not completed within that time period, the temporary permit shall be revoked and the applicant shall no longer work in Kentucky as a physical therapist~~]

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing, 9/2/04"; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country 10/12/00."

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

ROY GRUBB, P.T., Chair

APPROVED BY AGENCY: October 9, 2006

FILED WITH LRC: October 10, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2006 at 9 a.m. ET at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing 5 days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 November 30, 2006. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502)429-7140, fax (502)429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for foreign-educated physical therapists.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060 and 327:040(1), and (11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for foreign-educated licensing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for foreign educated licensing 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 clarifies the eligibility for foreign-educated licensing approval process.

(b) The necessity of the amendment to this administrative regulation: To clarify the requirements for foreign educated physical therapy candidates.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a foreign-educated physical therapy candidate to become licensed in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 25 applicants a year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Immigration laws are changing requiring internet based English requirements

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More uniformity and fairness in determining whether a foreign-educated applicants demonstrates educational equivalency to a U.S.-educated physical therapists.

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

(a) Initially: There will be no additional costs to the board.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure 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 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 regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Board of Physical Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(1), (11) and 327.060

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? No new costs are anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196 035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, October 12, 2006 [~~November 8, 2005~~], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications (Amended 11/8/2005)
KSP 02-01-02	Inmate Canteen (Amended 11/8/2005)
[~~KSP 02-08-02~~	~~Inventory Control and Warehouse Operations (Amended 3/11/04)~~]
KSP 02-12-02	Inmate Funds (Amended 10/12/06 [~~3/11/04~~])
[~~KSP 05-02-01~~	~~Management Information System (Amended 11/8/2005)~~]
KSP 06-01-02	Inmate Master Records (Amended 10/12/06 [~~11/8/2005~~])
KSP 10-02-01	Special Management Unit Operating Procedures, Living Conditions and Classification (Amended 10/12/06 [~~11/8/2005~~])
KSP 10-02-05	Death Row (Amended 10/12/06 [~~11/8/2005~~])
KSP 10-04-01	Special Needs Inmates (As Amended 10/12/06 [~~11/8/2005~~])
KSP 13-01-01	Pharmacy Procedures (Amended 11/8/2005)
KSP 13-02-01	Health Services (Amended 11/8/2005)
KSP 13-02-03	Continuity of Care (Amended 10/12/06 [~~11/8/2005~~])
KSP 13-02-04	Levels of Care and Staff Training (Amended 11/8/2005)
KSP 13-02-05	Consultations (Amended 9/14/2005)
KSP 13-02-08	Health Records (Amended 10/12/06 [~~11/8/2005~~])
KSP 13-02-09	Psychiatric and Psychological Services (Amended 11/8/2005)
KSP 13-02-13	Optometric Services (Amended 9/14/2005)
KSP 13-06-02	Informed Consent (Amended 11/8/2005)
KSP 14-03-01	Marriage of Inmates (Amended 10/12/06 [~~9/14/2005~~])
KSP 14-04-01	Legal Services (Amended 11/8/2005)
KSP 14-06-01	Inmate Grievance Procedure (Amended 9/14/2005)
KSP 15-06-01	Adjustment Procedures (Amended 9/14/2005)
KSP 16-01-01	Visiting Program (Amended 10/12/06 [~~9/14/2005~~])
KSP 16-02-01	Inmate Correspondence (Amended 10/12/06 [~~11/8/2005~~])
KSP 16-03-02	Inmate Telephone Access (Amended 11/8/2005)
KSP 16-04-01	Inmate Packages (Amended 11/8/2005)
KSP 17-01-01	Inmate Personal Property (Amended 9/14/2005)
KSP 17-01-02	Disposition of Unauthorized Property (Amended 11/8/2005)
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items (Amended 11/8/2005)
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control (Amended 11/8/2005)
KSP 17-02-01	Inmate Reception and Orientation (Amended 11/8/2005)
KSP 18-01-01	General Guidelines and Functions of the Classification Committee (Amended 9/14/2005)
KSP 18-06-01	Classification Document (Amended 11/8/2005)
KSP 18-10-01	Preparole Progress Report (Amended 9/14/2005)
KSP 18-15-01	Protective Custody Unit (Amended 9/14/2005)
KSP 19-04-01	Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 7/12/00)
KSP 19-04-02	Unit Classification Committee and Inmate Work Assignments (Amended 10/12/06 [~~3/11/03~~])
KSP 19-05-01	Correctional Industries (Amended 9/14/2005)
KSP 20-04-01	Educational Programs (Amended 4/15/02)
KSP 22-04-01	Arts and Crafts Program (Amended 10/12/06 [~~12/12/01~~])
KSP 23-01-03	Religious Services (Amended 11/8/2005)
KSP 25-01-01	Release Preparation Program (Added 12/12/01)
KSP 25-01-02	Inmate Release Procedure (Amended 9/14/2005)
KSP 25-10-01	Discharge of Inmates by Shock Probation (Added 7/12/00)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 275 E. Main Street[~~2439 Lawrenceburg Road~~], P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: October 5, 2006
FILED WITH LRC: October 12, 2006 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2006 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 125 Holmes Street, Second Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001, ext. 336, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky State Penitentiary including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Kentucky State Penitentiary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky State Penitentiary into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Penitentiary.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky State Penitentiary 333 employees and 846 inmates, and all visitors to state correctional institutions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No Funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky State Penitentiary budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: $0

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation may impact Kentucky State Penitentiary by changing a number of operational procedures.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for KSP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for KSP.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky State Penitentiary operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

5. How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky State Penitentiary operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

Note. 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 Public Health
Division of Epidemiology
(Amendment)

901 KAR 5:020. Delayed birth registration.

RELATES TO: KRS Chapter 13A, Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.056

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 213 relating to Vital Statistics requires [~~directs~~] the Cabinet for Health and Family Services [~~Human Resources~~] to register all births that occur in Kentucky. KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate programs and fulfill the responsibilities vested in the cabinet. The purpose of this administrative regulation is to provide a uniform procedure for registering births which were not reported at the time of birth.

Section 1. Definitions. "Delayed birth registration" means the registration of a nonrecorded birth after the time prescribed by KRS 213.046.

Section 2. Delayed Birth Registration. (1) A delayed birth certificate prepared by an institution or bearing the bona fide signature of the physician or midwife shall be accepted by the State Registrar of Vital Statistics for registration if filed before the child is seven (7) years old.

(2) If a birth did not occur in an institution, the physician or midwife is deceased or otherwise not available, or if there was no professional attendant at the birth, the birth certificate shall be accepted for registration if it meets the following criteria. It is:

(a) Completed by a parent or nearest living relative;

(b) Supported by the affidavit of the parent or nearest living relative; and

(c) Supported by a document that:

1. Was established more than one (1) year prior to the date of the application; and

2. Reflects the date of birth, place of birth, and name of the parents.

(3) Any birth certificate presented for registration more than seven (7) years after birth occurred shall be prepared on form VS-B-5, "Established [~~Delayed~~] Certificate of Birth and Affidavits" [~~(11/91)~~].

(4) Information contained on the VS-B-5 shall be supported by the following material [~~This form is incorporated by reference and may be viewed or obtained at the Office of Vital Statistics, 275 East Main Street, Frankfort, Kentucky, 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Facts stated therein shall be supported by~~]:

(a) The affidavit of a parent or nearest living relative of legal age no less than ten (10) years older than the applicant;

(b) The affidavit of a nonrelative of legal age no less than ten (10) years older than the applicant, showing the applicant's date of birth, place of birth, and names of parents, and if the affidavits required in paragraphs (a) and (b) of this subsection are not obtainable, a document shall be substituted for each affidavit. If the individual whose birth is to be recorded is between the ages of seven (7) and seventeen (17), the document used shall be established no less than three (3) years prior to the date of application. [~~; and~~]

(c) One (1) document which was established no less than ten (10) years prior to the date of application showing the date of birth, place of birth and names of parents. If the individual whose birth is to be recorded is between the ages of seven (7) and seventeen (17), the document used shall be established no less than three (3) years prior to the date of application, [~~and~~] If the affidavits required in paragraphs (a) and (b) of this subsection are not obtainable a document shall be substituted for each affidavit.

(5) [~~(d)~~] Acceptable documents for paragraph (c) of this subsection may include:

(a) [~~1.~~] Insurance policies,

(b) [~~2.~~] Census, hospital, school or church records;

(c) [~~3.~~] Marriage application forms; [~~and~~]

(d) [~~4.~~] Military records;

(e) Birth certificate of a child;

(f) Employment records;

(g) Physician's office records;

(h) Local health department records;

(i) Passports; or

(j) Voter's registration records.

Section 3. Incorporation by Reference. (1) "VS-B-5, Established Certificate of Birth and Affidavits", edition 1/07, is incorporated by reference.

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD FAAP, CPE, Commissioner

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, 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 November 14, 2006, 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 November 30, 2006. 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: Sheryl Meador

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises the form used to establish a registration of birth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 13A.2255 when revising a form that is incorporated by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.056 (1), (3), (4), (5), (6) requires the filing of a delayed birth certificate. This regulation incorporates by reference the form used to comply with that statutory requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides through incorporated material the necessary form for establishing a registration of birth.

(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 incorporates by reference the new form to be used in establishing a registration of birth and also provides for additional acceptable documents to be used as supporting evidence.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement a revision of the form VS-B-5 (1/07).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing the form necessary to establish a registration of birth with the Office of Vital Statistics under KRS 213.056.

(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 a revision in the form VS-B-5.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation may impact all individuals born in the state of Kentucky who do not have a birth certificate on file.

(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 individuals will be asked to provide more specific information.

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

(a) Initially: Minimal staff cost to change form.

(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: Sources of revenue to be used for the implementation and enforcement of this administrative regulation are state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment will not affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. None

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 (+/-): There is no anticipated impact upon the revenues of local government due to the implementation of this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Fraud, Waste, and Abuse,
Identification and Prevention
(Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010-218A.030, 218A.100, 218A.110, 21 C.F.R. 1308.14, 21 U.S.C. 801, 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical position or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Modafinil;
(9) Pemoline, including organometallic complexes and chelates;
(10) Phentermine;
(11) Pipradrol;
(12) Sibutramine; and
(13) SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Carisoprodol;
(5) Chlordiazepoxide;
(6) Clobazam;
(7) Clonazepam;
(8) Clorazepate;
(9) Clotiazepam;
(10) Cloxazolam;
(11) Delorazepam;
(12) Diazepam;
(13) Dichloralphenazone;
(14) Estazolam;
(15) Ethyl loflazepate;
(16) Fludiazepam;
(17) Flunitrazepam,
(18) Flurazepam;
(19) Halazepam;
(20) Haloxazolam;
(21) Ketazolam;
(22) Loprazolam;
(23) Lorazepam;
(24) Lormetazepam;
(25) Mebutamate;
(26) Medazepam;
(27) Methohexital;
(28) Midazolam;
(29) Nimetazepam;
(30) Nitrazepam;
(31) Nordiazepam;
(32) Oxazepam;
(33) Oxazolam;
(34) Pinazepam;
(35) Prazepam;
(36) Quazepam;
(37) Temazepam;
(38) Tetrazepam;
(39) Triazolam;
(40) Zaleplon; ~~and~~]
(41) Zopiclone; and
(42) Zolpidem.

Section 3. Narcotics. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, as set forth below:

(1) Butorphanol;

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);

(3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and

(4) Nalbuphine.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
ROBERT J. BENVENUTI, III, Esq., Inspector General
APPROVED BY AGENCY: October 1, 2006
FILED WITH LRC: October 9, 2006 at 4 p.m.
PUBLIC HEARING AND WRITTEN COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on November 21, 2006, 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 November 14, 2006, 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 November 30, 2006. 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: Steven D. Davis, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates Schedule IV substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of KRS 218A.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218A.020 mandates that the Kentucky Cabinet for Health and Family Services add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule IV controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation designates Schedule IV controlled substances. This regulation is necessary to promote consistency of the state listing of Schedule IV controlled substances with the federal listing at 21 C.F.R. Section 1308.14.

(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 one substance to the listing of Schedule IV controlled substances and establishes consistency between federal and state Schedule IV controlled substances lists.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to add Zopiclone to the Kentucky Schedule IV controlled substances list.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.020 requires the Kentucky Cabinet for Health Services by administrative regulation to add, delete, or reschedule controlled substances based upon the factors related to potential for abuse, actual patterns of abuse, and risk to public health. The federal government added Zopiclone, a cyclopyrrolone hypnotic, to the federal Schedule IV listing because of the potential for abuse and dependence. This administrative regulation brings the current state listing of Schedule IV substances into line with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment promotes the intent of KRS Chapter 218A by recognizing an additional controlled substance that has been determined to have potential for abuse.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All dispensers of controlled substances and medical professionals will be affected by this regulation including pharmacist, physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist physician, dentist, podiatrist, and veterinarian. There are approximately 35,000 individuals who will be affected by the regulation amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in paragraph (3) will be required to follow KRS 218A with respect to the additional controlled substance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be negligible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities support the addition of this medication to the controlled substances listing as it will assist in preventing abuse of this potentially addictive medication.

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

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

(b) On a continuing basis: There will be no additional cost associated with this amendment on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amended regulation will not increase any fees or require any additional funding to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is responsible for administering KRS Chapter 218A and for establishing and revising the listing of controlled substances.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.010-218A.030, 218A.100, 218A.110, 21 C.F.R. 1308 14, 21 U.S.C. 801, 812.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues of any state or local government agency for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government agencies for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government agencies for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for subsequent years.

Note: 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
Office of Inspector General
Division of Fraud, Waste, and Abuse,
Identification and Prevention
(Amendment)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS 218A.010-218A.030, 218A.120, 218A.130, 21 C.F.R. 1308.15, 21 U.S.C. 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule V controlled substances.

Section 1. Schedule V Controlled Substances. The Cabinet for Health and Family Services [~~Human Resources~~] hereby designates as Schedule V controlled substances, in addition to those specified by KRS 218A.130, the following:

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. A [~~Any~~] compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(c) Not more than two and five-tenths (2.5) milligrams of diphenoxylate hydrochloride and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(d) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(e) Not more than five-tenths (0 5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(f) Pregabalin; and

(g) Pyrovalerone.

(2) Stimulants. A [~~Any~~] material, compound, mixture, or preparation which contains any quantity of the following substance[s] having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Section 2. Dispensing Without Prescription. A controlled substance listed in Schedule V which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if:

(1) The medicinal preparation contains in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) nor more than forty-eight (48) dosage units of any such controlled substance containing opium, shall be [is] dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is in accordance with the requirements of the federal and state Food, Drug, and Cosmetic Act and the United States Pharmacopoeia;

(4) The preparation shall be [is] dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation shall not be [~~is not~~] displayed in areas open to the public;

(6) The dispensing shall be [is] made only by a pharmacist, and not by a nonpharmacist employee even if under the supervision of a pharmacist. Although, after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist;

(7) The purchaser shall be [is] at least eighteen (18) years of age;

(8) The pharmacist shall require the [~~requires every~~] purchaser of a controlled substance under this section, not known to him, to furnish suitable identification, including proof of age if [~~where~~] appropriate; and

(9) The dispensing of exempt controlled substances under this administrative regulation shall be [is] recorded in a bound book, maintained by the pharmacist, which shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser. The book shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200.

ROBERT J. BENVENUTI, III, Esq., Inspector General
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 9, 2006

FILED WITH LRC: October 9, 2006 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, 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 November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. 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: Steven D. Davis, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates Schedule V substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of KRS 218A.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218A.020 mandates that the Kentucky Cabinet for Health and Family Services add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule V controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation designates Schedule V controlled substances.

This regulation is necessary to promote consistency of the state listing of Schedule V controlled substances with the federal listing at 21 C.F.R. Section 1308.15.

(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 2 substances to the listing of Schedule V controlled substances and establishes consistency between federal and state Schedule V controlled substances lists.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to add Pregabalin and Pyrovalerone to the Kentucky Schedule V controlled substances list.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.020 requires the Kentucky Cabinet for Health Services by administrative regulation to add, delete, or reschedule controlled substances based upon the factors related to potential for abuse, actual patterns of abuse, and risk to public health. The federal government added Pregabalin and Pyrovalerone to the federal Schedule V listing because of the potential for abuse and dependence. This administrative regulation brings the current state listing of Schedule V substances into line with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment promotes the intent of KRS Chapter 218A by recognizing an additional controlled substance that has been determined to have potential for abuse.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All dispensers of controlled substances and medical professionals will be affected by this regulation including pharmacist, physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist physician, dentist, podiatrist, and veterinarian. There are approximately 35,000 individuals who will be affected by the regulation amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in paragraph (3) will be required to follow KRS Chapter 218A with respect to the additional controlled substance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be negligible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities support the addition of this medication to the controlled substances listing as it will assist in preventing abuse of this potentially addictive medication.

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

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

(b) On a continuing basis: There will be no additional cost associated with this amendment on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amended regulation will not increase any fees or require any additional funding to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is responsible for administering KRS Chapter 218A and for establishing and revising the listing of controlled substances.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.010-218A.030, 218A.100, 218A.110, 21 C.F.R. 1308.15, 21 U.S.C. 801, 812.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues of any state or local government agency for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government agencies for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government agencies for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for subsequent years.

Note: 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 1:160. Home and community based waiver services.

RELATES TO: KRS 205.520(3), 205.5605-205.5607

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 205.635, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n[~~, 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 to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions for home and community based waiver services. The amendment establishes a consumer directed services

option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066[, Section 4].

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis [of a health nature] that ensure optimal functioning of an HCB recipient who does not require twenty-four (24) hour care in an institutional setting [but do not require an HCB recipient to remain at a facility twenty-four (24) hours per day].

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts [acting] within his or her scope of practice and [who] is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(7) [(5) "Care planning" means a process whereby a plan of care is developed which specifies the amount, frequency, and duration of services to meet an HCB recipient's needs and contains provisions for reassessment for HCB waiver services.

(6)] "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) [or] Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(8) "Consumer" is defined by KRS 205.5605(2).

(9) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home- and community-based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(10) [(7)] "DCBS" means the Department for Community Based Services.

(11) [(8)] "Department" means the Department for Medicaid Services or its designee.

(12) "Electronic signature" is defined by KRS 369.102(8).

(13) [(9)] "HCB recipient" means an individual who:

(a) Is a recipient defined by KRS 205.8451(9) [Meets the criteria for a recipient as defined in KRS 205.8451];

(b) Meets the NF level of care criteria established [as defined] in 907 KAR 1:022; and

(c) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(14) "Home and community support services" means nonresidential and nonmedical home- and community-based services and supports that:

(a) Meet the consumer's needs; and

(b) Constitute a cost-effective use of funds.

(15) [(10)] "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services for individuals who meet the requirements of Section 4 of this administrative regulation.

(16) [the elderly and disabled.

(11)] "Home health agency" means a Medicare and Medicaid certified agency licensed in accordance with 902 KAR 20.081.

(17) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(18) "Licensed professional clinical counselor" or "LPCC" means a person licensed in accordance with KRS 335.500 to 335.599.

(19) [(12)] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9) [licensed practical nurse requirements established in 902 KAR 20:066]; and

(b) Works under the supervision of a registered nurse.

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

(14)] "NF" means nursing facility.

(21) [(15)] "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

(22) [(16)] "Normal child care[baby sitting]" means general care provided to a child which includes custody, control, and supervision.

(23) [(17)] "Occupational therapist" is defined by KRS 319A.010(3).

(24) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(25) [means a person who meets the occupational therapist requirements established in 902 KAR 20:066.

(18)] "Physical therapist" is defined by KRS 327.010(2).

(26) "Physical therapist assistant" is defined by 201 KAR 22:001(13).

(27) [means a person who meets the physical therapist requirements established in 902 KAR 20:066.

(19)] "Physician assistant" or "PA" is defined in KRS 311.840(3).

(28) [(20)] "Plan of treatment" means a care plan used by an ADHC center.

(29) [(21)] "Registered nurse" or "RN" means as defined by KRS 314.011(5) [a person who meets the registered nurse requirements established in 902 KAR 20:066] and who has one (1) year or more experience as a professional nurse.

(30) "Representative" is defined by KRS 205.5605(6).

(31) "Self direct" means to choose independently to utilize CDO services and make all decisions associated with CDO services.

(32) "Sex crime" is defined by KRS 17.165(1).

(33) [(22)] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(34) "Speech-language pathologist" is defined by KRS 334A.020(3).

(35) "Support broker" means an agency that is designated by the department to assist a consumer in all aspects of CDO services.

(36) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes, and

(g) Total monthly amount.

(37) "Violent crime" is defined by KRS 17.165(3).

[(23) "Speech pathologist" means a person who meets the speech pathologist requirements established in 902 KAR 20:066].

Section 2. Provider Participation. (1) In order to provide HCB waiver services, excluding consumer directed option services, a provider shall be a home health agency or ADHC center that provides services:

(a) Directly; or

(b) Indirectly through a subcontractor.

(2) [In order to provide HCB waiver services,] An out-of-state provider shall comply with the requirements of this administrative regulation [meet the same requirements as an in-state provider].

(3) A provider shall:

(a) Comply with the following administrative regulations and program requirements:

1. 902 KAR 20:081;
2. 907 KAR 1:671;
3. 907 KAR 1:672;
4. 907 KAR 1:673,
5. The Department for Medicaid Services Home and Community Based Waiver Services Manual; and
6. [~~902 KAR 20:081, 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673, the Department for Medicaid Services Home and Community Based Waiver Services Manual, and~~] The Department for Medicaid Services Adult Day Health Care Services Manual;

(b) Not enroll an HCB recipient for whom the provider [~~to whom they~~] cannot provide HCB waiver services;

(c) Be permitted [~~Have the freedom~~] to accept or not accept an HCB recipient;

(d) Implement a procedure to ensure that the following is reported [~~which ensures the reporting of all incidences which may include~~]:

1. Abuse, neglect, or exploitation of an HCB recipient in accordance with KRS Chapters 209 or 620;
2. A slip or fall;
3. [,] A transportation incident;
4. [,] Improper administration of medication,
5. [~~, or~~] A medical complication; or
6. An incident [~~3. Incidents~~] caused by the recipient, including:

a. [~~such as~~] Verbal or physical abuse of staff or other recipients;

b. [,] Destruction or damage of property; or

c. [~~of~~] Recipient self-abuse;

(e) Ensure a copy of each incident reported in accordance with paragraph (d) of this subsection [~~report~~] is maintained in a central file [~~by the provider and is~~] subject to review by the department;

(f) Implement a process for communicating the incident, the outcome, and the prevention plan to:

1. An HCB recipient, family member, or his responsible party; and
2. The attending physician, PA, or ARNP;

(g) Maintain documentation of any communication provided [~~Document the communication~~] in accordance with subsection (f) of this section. The documentation shall be:

1. Recorded in the HCB recipient's case record; and
2. Signed and dated by the staff member making the entry;

(h) Implement a procedure that ensures the reporting of a recipient or any interested party's [~~which ensures the reporting of~~] a complaint against the provider [~~an agency~~] or its personnel [~~by a recipient or any interested party~~];

(i) Inform a recipient or any interested party in writing of the provider's:

1. Hours of operation; and
2. Policies and procedures [~~of the agency~~];

(j) Not permit a staff member who has contracted a communicable disease to provide a service to an HCB recipient until the condition is determined by a physician to no longer [~~not to~~] be contagious; and

(k) Ensure that a staff member who provides direct services.

1. Demonstrates the ability to:

a. Read;

b. [,] Write;

c. [,] Understand and carry out instructions;

d. [~~, Record messages,~~] Keep simple records,[,] and

e. Interact with an HCB recipient when providing an HCB waiver service;

2. Be trained by an HCB waiver provider; [~~and~~]
3. Be supervised by an RN at least every other month; and
4. Submit to a criminal records check and not have pled guilty to or been convicted of committing a sex crime or a violent crime.

(4) An individual who provides home and community support services under the CDO program shall:

(a) Be selected by the consumer;

(b) Submit a completed MAP-074 to the consumer's support broker;

(c) Demonstrate proof of eligibility for employment in accordance with applicable state and federal labor, tax, and immigration laws;

(d) Be able to communicate effectively with the consumer or consumer's representative;

(e) Provide record-keeping services, including maintaining the consumer's financial records;

(f) Sign a confidentiality agreement;

(g) Report suspected abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030;

(h) Submit a written declaration to the support broker attesting that he or she is free of an infectious or contagious disease;

(i) Demonstrate competence to safely attend to the consumer as described in the plan of care;

(j) Successfully complete the self-directed and consumer-directed services training curriculum;

(k) Successfully complete a certified cardiopulmonary resuscitation and first aid training;

(l) Successfully complete training that is requested by the consumer and not identified in paragraph (j) or (k) of this subsection; and

(m) Be approved by the department.

Section 3. Maintenance of Records. (1) An HCB waiver provider shall maintain:

(a) A clinical record for each HCB recipient which shall contain the following:

1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351[A] and signed by the:
   a. Assessment team; and
   b. Department [~~recipient or his legal representative~~];
3. A completed MAP-109-HCBW;
4. A copy of the MAP-350 signed by the [a] recipient or his legal representative at the time of application or reapplication and each recertification thereafter,
5. The name of the case manager;
6. Documentation of each contact with, or on behalf of, an HCB recipient;
7. Documentation that each [~~an~~] HCB recipient receiving ADHC services was provided a copy of the ADHC center's posted hours of operation; and
8. Documentation of each service provided that shall include:
   a. The date the service was provided;
   b. The duration of the service;
   c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the HCB recipient's home;
   d. Itemization of each [~~An itemized documentation of~~] personal care or homemaking service delivered;
   e. The HCB recipient's arrival and departure time[~~of the HCB recipient~~], excluding travel time, if the service was provided at the ADHC center;
   f. Progress notes which shall include documentation of changes, responses and treatments utilized to evaluate the HCB recipient's needs; [~~and~~]
   g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided for a period of at least six 6) [~~five (5)~~] years from the date that a covered service is provided, except in the case of a minor[,] whose records shall be retained for three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

(2) For each consumer, the support broker and department shall maintain a clinical record that includes:

(a) A copy of the completed MAP-351, the original of which shall be submitted to the department by the HCB waiver provider that performs the assessment or reassessment,

(b) A copy of the completed MAP-109-HCBW;

(c) A copy of the completed MAP-350;

(d) If the consumer selects a family member to provide CDO services, a written declaration of freedom of choice that is:

1. Completed for each family member providing CDO services;
2. Signed by the consumer; and
3. Attached to the MAP-350; and

(e) A financial record that includes:

1. A copy of the completed MAP-109-HCBW;
2. A copy of a completed MAP-074 for each CDO employee;

and

3 Documentation of services provided by each CDO employee.

(3) Upon request, an HCB provider shall make information regarding service and financial records available to the:

(a) [The] Department;

(b) [The Commonwealth of Kentucky,] Cabinet for Health and Family Services, Office of Inspector General[,] or its designee;

(c) [The United States] Department for Health and Human Services[,] or its designee;

(d) [The United States] General Accounting Office[,] or its designee;

(e) [The Commonwealth of Kentucky,] Office of the Auditor of Public Accounts[,] or its designee; or

(f) [The Commonwealth of Kentucky,] Office of the Attorney General[,] or its designee.

Section 4. HCB Recipient Eligibility Determinations and Redeterminations. (1) An HCB waiver service shall be provided to a Medicaid eligible HCB recipient who:

(a) Is determined by the department to meet NF level of care requirements; and

(b) [who] Would, without waiver services, be admitted by a physician's order to an NF.

(2) The department shall perform an NF level of care determination for each [regarding an] HCB recipient [shall be performed by the department] at least once every twelve (12) months[,] or more often if necessary.

(3) An HCB waiver service shall not be provided to an individual who:

(a) [Who] Does not require a service other than:

1. A minor home adaptation;

2. Case management; or

3 A minor home adaptation and case management,

(b) [Who] Is an inpatient of.

1. A hospital;

2. An NF; or

3. An intermediate care facility for an individual with mental retardation or a developmental disability [individuals with mental retardation or developmental disabilities (ICF/MR/DD)];

(c) [Who] Is a resident of a licensed personal care home; or

(d) [Who] Is receiving services from [a service in] another Medicaid home and community based services waiver program.

(4) An HCB waiver provider shall

(a) Inform an HCB recipient or his legal representative of the choice to receive:

1. HCB waiver services; or

2. Institutional services; and

(b) Require an HCB recipient to sign a MAP-350 form at the time of application or reapplication and at each recertification [thereafter] to document that the individual [he] was informed of the choice to receive HCB waiver or institutional services [his choices].

(5) An eligible HCB recipient or the recipient's [his] legal representative shall select a participating HCB waiver provider from which the recipient [whom he] wishes to receive HCB waiver services.

(6) The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(7) An HCB waiver provider shall use a MAP-24 to notify the local DCBS office and the department of an HCB recipient's[on a MAP-24 form if an HCB recipient is]:

(a) Termination [Terminated] from the HCB waiver program; or

(b)1. Admission [Admitted] to an NF for less than sixty (60) consecutive days; and

2. Return [Returning] to the HCB waiver program from an NF within sixty (60) consecutive days.

Section 5. Covered Services. (1) An HCB waiver service [shall]:

(a) Shall Be prior authorized by the department to ensure that the service or modification of the service already meets [is adequate for] the needs of the HCB recipient,

(b) Shall be provided pursuant to a plan of care or, for a CDO service, be provided pursuant to a spending plan; [and]

(c) Shall, except for a CDO service, not be provided by a member of the HCB recipient's family. A CDO service may be provided by an HCB recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) Covered HCB services include:

(a) A comprehensive assessment that shall:

1. [The following services provided to an HCB recipient by an HCB waiver provider who meets the requirements established in Section 2 of this administrative regulation shall be covered by the department:

(a) An assessment service which shall include:

1. A comprehensive assessment which shall:

a.] Identify an HCB recipient's needs and the services that the HCB recipient or the recipient's [his] family cannot manage or arrange for on the recipient's [his] behalf;

2. [b.] Evaluate an HCB recipient's physical health, mental health, social supports, and environment;

3. [c.] Be requested by an individual seeking [requesting] HCB waiver services or the individual's family, legal representative, physician, physician assistant, or ARNP;

4 [, a family or legal representative of the individual, the individual's physician, a physician assistant, or an ARNP;

d.] Be conducted by an assessment team[,] within seven (7) calendar days of receipt of the request for assessment;

5 [, by an assessment team comprised of an RN and a social worker or two (2) RN's, and

e.] Include at least one (1) face-to-face home visit by a member of the assessment team with the HCB recipient and, if appropriate, the recipient's family; and

6 Identify appropriateness and choice for CDO; [contact with an HCB recipient and, if appropriate, his family by the RN or social worker in the HCB recipient's home; and

2. Care planning resulting in the development of a plan of care that shall:

a. Reflect the needs of the HCB recipient;

b. List goals, interventions, and outcomes as related to clause a of this subparagraph;

c. Specify services needed;

d. Determine the amount, frequency, and duration of services;

e. Contain provisions for reassessment at least every twelve (12) months;

f. Be developed and signed by the assessment team, case manager, and HCB recipient or his family;

g. Be reviewed and signed by the attending physician, PA, or ARNP, and

h. Be submitted to the department within fourteen (14) calendar days of receiving the department's verbal approval of NF level of care;]

(b) A reassessment service which shall:

1. Determine the continuing need for HCB waiver services and, if appropriate, CDO services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures used in [as for] an assessment service;

4. Not be retroactive; and

5. Be initiated by an HCB waiver provider or support broker who shall:

a. Notify the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive; and

b. Not be reimbursed for a service provided during a period that an HCB recipient is not covered by a valid level of care certification; [and

5. Not be retroactive;]

(c) A case management service which shall:

1. Consist of coordinating the delivery of direct and indirect services to an HCB recipient;

2. Be provided by a case manager who shall:

a. Be an RN, [an] LPN, [or a] social worker, certified psychologist with autonomous functioning, licensed psychological practitioner, LFMT, or an LPCC;

b. Arrange for a service but not provide a service directly;

c. Contact the HCB recipient monthly by telephone or through a face-to-face visit [the HCB recipient] at the HCB recipient's residence or in the ADHC center, with a minimum of one (1) face-to-face visit [contact] between the case manager and the recipient every other month; and

d. Assure that service delivery is in accordance with an HCB recipient's plan of care; [and]

3. Not include a group conference; and

4. Include development of a plan of care that shall:

a. Be completed on the MAP-109-HCBW;

b. Reflect the needs of the HCB recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the assessment team, case manager, and HCB recipient or his family;

h. Be reviewed and signed by the attending physician, PA, or ARNP; and

k. Be submitted to the department no later than twenty-one (21) calendar days after receiving the department's verbal approval of NF level of care;

(d) A homemaker service which shall consist of general household activities and shall be provided:

1. By staff pursuant to Section 2(3)(j) and (k) of this administrative regulation; and

2. To an HCB recipient:

a. Who is functionally unable, but [and] would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities;

(e) A personal care service which shall consist of age-appropriate medically-oriented services and [which shall] be provided:

1. By staff pursuant to Section 2(3)(j) and (k) of this administrative regulation; and

2. To an HCB recipient:

a. Who does not need [Whose needs are not of a] highly skilled or technical care [nature];

b. For whom services are essential to the recipient's [his] health and welfare and not for the recipient's[, rather than his] family; and

c. Who needs assistance with age-appropriate activities of daily living;

(f) An attendant care service which shall consist of hands-on care that is [which shall]:

1. [Be] provided by staff pursuant to Section 2(3)(j) and (k) of this administrative regulation to an HCB recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours; [family or other support providing care but who are employed outside the home and are unable to provide care during their working hours. The family or friend providing care shall not be required to live in the same residence as the individual for whom he is providing care; however, he shall provide care or supervision in the HCB recipient's home during the hours the attendant care provider is not available, and]

c. Prior to being eligible for the HCB Waiver Program[,] in accordance with Section 4 of this administrative regulation, was able to care for him or herself;

2. Not [be] of a general housekeeping nature; and

3. Not [be] provided to an HCB recipient who is receiving any of the following HCB waiver services:

a. Personal care;

b. Homemaker; or

c. ADHC;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and [those persons normally providing the care and shall] be:

1. Provided by staff pursuant to Section 2(3)(j) and (k) of this administrative regulation who provide [provides] services at a level that appropriately and safely meets the medical needs of the HCB recipient in the following settings:

a. An HCB recipient's place of residence; or

b. An ADHC center; and

2. Provided to an HCB recipient who has care needs beyond normal child care; and

3. Used no less than every (6) months [baby-sitting];

(h) A minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of an HCB recipient and which shall.

1. Meet all applicable safety and local building codes;

2. Relate strictly to the HCB recipient's disability and needs;

3. Exclude an adaptation or improvement to a home that:

a. Has no direct medical or remedial benefit to the HCB recipient; or

b. Adds to the total square footage of a home; and

4. Be submitted on form MAP-95 for prior authorization; or

(i) An ADHC service which shall.

1. Except for an HCB recipient approved for an ADHC service prior to May 1, 2003, be provided to an HCB recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including [which may include] ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN [or other qualified staff];

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of an HCB recipient, including:

(i) [and shall include] Monitoring of vital signs;

(ii)[.] Assistance with activities of daily living; and

(iii)[.] Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an HCB recipient;

3. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, PA, or ARNP in an HCB recipient's ADHC plan of treatment. Ancillary services shall [which]:

a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the HCB recipient or ADHC center staff;

b. Be [Are] reasonable and necessary for the HCB recipient's condition;

c. Be [Are] rehabilitative in nature;

d. Include physical therapy provided by a physical therapist or physical therapist assistant, occupational therapy provided by an occupational therapist or occupational therapist assistant, or speech therapy provided by a speech-language pathologist; and

e. Comply with the physical [therapy], occupational [therapy], and speech therapy requirements established in ["]Technical Criteria for Reviewing Ancillary Services for Adults[, February 2000 Edition" and "Technical Criteria for Reviewing Ancillary Services for Pediatrics, April 2000 Edition"];

4. Include respite services pursuant to paragraph (g) of this subsection;

5. Be provided to an HCB recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

c. An ARNP;

d. An RN;

e. An LPN,

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational therapist assistant;

k. [i.] A speech pathologist;

l. [j.] A social worker;

m. [k.] A nutritionist; [or]
n. [l.] A health aide; [and]
o. An LPCC;
p. An LEMT;
q. A certified psychologist with autonomous functioning; or
r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment developed and signed by the physician, PA, or ARNP in consultation with the ADHC RN and recipient or his legal representative. The plan of treatment shall [appropriate ADHC center staff which]:

a. Include [Includes] pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; [and]

b. [Shall] Be reviewed and revised, if needed, and a copy sent to the department every ninety (90) days; and

c. Include the signatures of the ADHC RN and the recipient or his legal representative.

(3) Modification of an ancillary therapy service or an ADHC unit of service shall require prior authorization as follows:

(a) Prior authorization shall:

1. Be requested by an RN or designated ADHC center staff; and

2. [shall] Require submission of the modification section [items 4 through 6 of page 10] of a MAP-351[A] form and a MAP-109-HCBW form to the department;

(b) An RN or designated ADHC center staff shall forward a copy of the documents required in paragraph (a) of this subsection to the HCB case manager or the consumer's support broker for inclusion in the HCB recipient's case records within ten (10) working days of the prior authorization request; and

(c) Upon approval or denial of a prior authorization request, the department shall provide written notification to [notify, in writing,] the HCB agency, the ADHC center, and the HCB recipient.

(4) Covered CDO services shall include the following:

(a) A home and community support service that shall be provided:

1. By an individual who meets the requirements in Section 2(3) of this administrative regulation;

2. To an HCB recipient who is not currently receiving case management, homemaking, personal care, attendant care, or respite services; and

(b) A service provided by a support broker that shall:

1. Provide assistance to a consumer with all aspects of the CDO service and may include:

a. Completing or revising a MAP-109-HCBW by using the Person Centered Planning: Guiding Principles during the development of the plan of care;

b. Recruiting, hiring, and managing individuals who provide a home and community support service;

c. Completing and submitting the following forms:

(i) MAP-070, Consumer Directed Options Program Representative Designation Form;

(ii) MAP-071, Consumer Rights and Responsibilities Under the Consumer Directed Options Program;

(iii) MAP-073, Termination of Consumer Directed Option (CDO); and

(iv) MAP-074, Consumer Directed Option Provider Agreement; or

d. Coordinating all services for consumers;

2. Be available twenty-four (24) hours per day, seven (7) days per week; and

3. Ensure all applicable federal and state laws and requirements are met.

(5) A consumer who is unable to self direct may designate a CDO representative who shall:

(a) Be twenty-one (21) years of age or older; and

(b) Sign a completed MAP-070.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-073.

(7) If imminent danger to a consumer's health, safety, or welfare exists, the department shall terminate the consumer's participation in the CDO program immediately without notice by completing a MAP-073. Upon termination, the department shall notify the consumer in writing.

(8) The department may terminate a consumer's participation in the CDO program upon determination that the consumer or CDO employee has not adhered to the provisions of the completed MAP-109-HCBW. Prior to the consumer's termination from CDO services, the department shall:

(a) Notify the HCBW assessment or reassessment service provider and consumer of the department's intent to terminate the consumer's participation;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow ninety (90) days for the consumer to:

1. Resolve the issue, develop and implement a prevention plan; or

2. Designate a CDO representative; and

(d) Send a MAP-073 to the consumer ninety (90) days after the department's notice of its intent to terminate the consumer's participation in the CDO program if the consumer fails to meet the requirements of paragraph (c) of this subsection.

(9) Upon termination from CDO services, a consumer shall transition to HCBW services.

Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 368.120.

(2) A home health provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 7. [6.] Appeal Rights. An appeal of a department determination regarding NF level of care or services to an HCB recipient or a consumer shall be in accordance with 907 KAR 1.563.

Section 8. [7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department for Medicaid Services Adult Day Health Care Services Manual", May 2005 edition;

(b) "Department for Medicaid Services Home and Community Based Waiver Services Manual", September 2006 edition;

(c) "Person Centered Planning: Guiding Principles", March 2005 edition;

(d) "Technical Criteria for Reviewing Ancillary Services for Adults", November 2003 edition;

(e) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services", February 2001 edition;

(f) "MAP-070, Consumer Directed Options Program Representative Designation Form", March 2005 edition;

(g) "MAP-071, Consumer Rights and Responsibilities Under the Consumer Directed Options Program", August 2006 edition;

(h) "MAP-073, Termination of Consumer Directed Option (CDO)", March 2005;

(i) "MAP-074, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services, Consumer

Directed Option Provider Agreement", March 2005 Edition;

(i) "MAP-95 Request for Equipment Form" Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services, September 2002 edition;

(k) "MAP-109-HCBW, Plan of Care/Prior Authorization for HCB Waiver Services", September 2006 edition;

(l) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(m) " MAP-351, The Department for Medicaid Services, HCB Waiver Client Assessment", September 2006 edition. [~~"MAP-351A, The Department for Medicaid Services, HCB Waiver Client Assessment", "June 2002 Edition";~~

~~(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Families and Children, Department for Community Based Services", "January 2000 Edition";~~

~~(c) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", "January 2000 Edition";~~

~~(d) "MAP-95 Request for Equipment Form" Commonwealth of Kentucky, Cabinet for Human Resources, Department for Medicaid Services, "April 1988 Edition";~~

~~(e) "Technical Criteria for Reviewing Ancillary Services for Adults", "February 2000 Edition"; and~~

~~(f) "Technical Criteria for Reviewing Ancillary Services for Pediatrics", "April 2000 Edition";~~

~~(g) "MAP-109-HCBW, Plan of Care/Prior Authorization for HCB Waiver Services, March 2003 Edition";~~

~~(h) "Department for Medicaid Services Adult Day Health Care Services Manual, March 2003 Edition"; and~~

~~(i) "Department for Medicaid Services Home and Community Based Waiver Services Manual, March 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: September 28, 2006
FILED WITH LRC: October 3, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, 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 November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 20, 2006. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for the home and community based waiver 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 provisions for the home and community based waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for the home and community based waiver services.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer-directed option services program that allows Medicaid home and community based waiver participants to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the consumer-directed option services program established by KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the consumer-directed option services 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 a consumer-directed option services program for home and community based waiver recipients in accordance with KRS 205.5605 and 5606.

(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 Medicaid's home and community based waiver recipients who opt to participate in the consumer-directed services program. Currently, there are approximately 13,000 members enrolled in the home and community based waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid home and community based waiver recipients may opt to participate in the consumer directed option services program. An individual who chooses to participate will be assisted by a support broker. Individual who wish to provide consumer directed services must meet basic requirements including: complete and submit a consumer directed option provider agreement to the consumer's support broker; complete a self-directed and consumer-directed service training curriculum; complete cardiopulmonary resuscitation and first aid training, be a U.S. citizen; sign a confidentiality agreement; report any suspected abuse, neglect, or exploitation; declare in writing that they are free of infectious or contagious disease; demonstrate ability to safely attend to consumer; provide record-keeping services for the consumer; and be able to communicate effectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A home and community based waiver recipient who enrolls in the consumer directed option program will be able to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports.

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

(a) Initially: Pursuant to KRS 205 5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that

would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer; however, the department is absorbing an administrative cost (support brokers and fiscal intermediaries). Additionally, utilization is unpredictable; therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer; however, the department is absorbing an administrative cost (support brokers and fiscal intermediaries). Additionally, utilization is unpredictable, therefore, the DMS is unable to determine a precise 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 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: Neither 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: 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid home and community based waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 45 C.F.R. Parts 260-265, 8 U.S C. 1611-1645, 42 U.S.C. 601-619
STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619, Pub. L. 109-171 [~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services.~~] KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(3) "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(4) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(5) "Constant care" means active care for a family [~~household~~] member living in the home by a work-eligible [~~an~~] individual other than the time:

(a) The family [~~time the household~~] member [~~or individual~~]

spends sleeping; or

(b) [Time] In which the family [household] member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (2) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Family member" means an individual related by blood, marriage, or adoption

(9) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent,

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent.

(10) [(9)] "Kentucky Works" means a program that assists [a: (a) Recipient of K-TAP] in obtaining education, training, experience and employment necessary to leave public assistance[; or (b) Former K-TAP recipient with job retention service].

(11) [(10)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(12) [(11)] "Prior labor market attachment" or "PLMA" means the parent has earned not less than $1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(13) [(12)] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524 et seq.;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

3. The spouse or unremarried surviving spouse if the marriage fulfils the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph; or

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age; or

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.

(14) [(13)] "Qualifying parent" means the parent who meets PLMA.

(15) [(14)] "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(16) [(15)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(17) [(16)] "Severe form of trafficking" is defined by 22 U.S.C. 7102.

(18) [(17)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(19) [(18)] "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

(20) [(19)] "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(21) [(20)] "Work" means participation in a Kentucky Works activity [component] pursuant to 921 KAR 2:370, Section 2(1)(c) [(2)(c)].

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(3) of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance, Form PA-33D, "Child's Certification of School Enrollment/Attendance", shall be required for a:

(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) Minor teenage parent pursuant to Section 19 (1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to 921 KAR 2.016, Section 1.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.

(b) A qualified alien, pursuant to Section 1(12) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(12) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S C. 1157;

2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U S.C. 5303A(d);

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.

(d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration, Form PA-14, "Declaration of Citizenship or Alien Status", shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(8) of this administrative regulation.

(2) A specific deprivation factor, under Sections 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;

2. Legal separation;

3. Marriage annulment;

4. Desertion of:

a. Thirty (30) days or more if the parent:

(i) Voluntarily leaves; or

(ii) Refuses to accept the child into his home; or

b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist in a case if the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:

1. Was present at the time of application; and

2. Has continued or is expected to last for a period of at least thirty (30) calendar days;

(b) The thirty (30) day period may include a period the claimant is undergoing:

1. Planned diagnostic study; or

2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI;

b. Is age sixty-five (65) or over;

c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;

d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S C. 1382c or 42 U.S.C. 416 by either the:

(i) Social Security Administration; or

(ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of application date;

i. Is recovering from surgery, illness or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement, or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness or impairment exists; and

2. The disability, illness or impairment is:

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:

(a) Available printed materials that provide information regarding available employment opportunity shall be researched;

(b) The local Office of Employment and Training office shall be contacted regarding accessible employment opportunity within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this section.

(9) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(11) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 1(11) of this administrative regulation by signing a completed Form PA-1C Supplement D, "Qualifying Parent Eligibility" with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for $500 of the $1000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2.370, Section 4(3); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent, or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care.

(b) If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care if no other eligible child is in the benefit group.

(4) (a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 11 of 921 KAR 2:016.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;

6. Passport,

7. Military record;

8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 16. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2.370.

Section 17. Cooperation in Child Support Activities. (1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child

support activities that shall include:

(a) Identifying the noncustodial parent or obligor;

(b) Providing information to assist in the:

1. Location of the noncustodial parent or obligor;

2. Enforcement of a child support order; or

3. Review or modification of a child support order;

(c) Establishing paternity, if required;

(d) Establishing, modifying or enforcing a child support order; and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3)(a) The cabinet shall provide written notice, Form CS-333, "Facts About the Child Support Program for K-TAP and Kinship Care Recipients", to the applicant or recipient, regarding the individuals' right to file a good cause claim for refusing to cooperate in a child support activity.

(b) The cabinet shall provide Form CS-333.1, "Facts About the Right to Claim Good Cause", to an applicant or recipient who:

1. Requests additional information regarding the criteria for filing a claim; or

2. Files a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

1. Child; or

2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release him for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, "Good Cause Claim/Determination", is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and

2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

1. Obtain permission for the contact; or

2. Enable the applicant or recipient to:

a. Present additional evidence or information so that the contact shall be unnecessary;

b. Withdraw the application for assistance or request discontinuance of K-TAP; or

c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

(a) Document the case;

(b) Determine that good cause:

1. Exists and a support activity cannot be initiated without endangering the:

a. Best interests of the child; or

b. Physical or emotional health of the child or the relative; or

2. Does not exist;

(c) Advise the applicant or recipient in writing, Part II of Form PA-121, "Good Cause Claim/Determination", of the result of the good cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016; and

(b) The cabinet shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 18. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 19. Minor Teenage Parents. (1) A minor teenage parent under the age of eighteen (18) living with the spouse shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 11 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian or appropriate adult relative pursuant to Section 11 of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11. of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 20. Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619 shall not be provided for more than sixty (60) cumulative months to a benefit group, as defined by Section 1(2) of 921 KAR 2:016, that includes:

(a) An adult;

(b) A minor teenage parent pursuant to Section 19 (8) of this administrative regulation; or

(c) A fugitive or drug felon not eligible pursuant to Section 22 or 23 of this administrative regulation.

(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 24 (1)(b) of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who has a physical or mental disability, as defined in Section 9(3)(a)2, (b) and (c) of this administrative regulation, as determined by the cabinet. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(c)12 [(2)(e)13] and 4(2); and

2. Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), a parent providing constant care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). [1. Is required to provide constant care for at least six (6) hours daily for a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available

2.] During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, as determined by the cabinet, who:

1. Has complied with:

a. Kentucky Works requirements pursuant to 921 KAR 2.370; and

b. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

2. During the extension period, shall:

a. Comply with:

(i) Kentucky Works requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, pursuant to 921 KAR 2.370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2 370, Section 4(4) [(3)]; and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2 370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence exemption pursuant to Section 24 (2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section 17 of this administrative regulation; and

b. Kentucky Works requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60)

months time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.

(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2.016, that includes an adult, or minor teenage parent pursuant to Section 19(8) of this administrative regulation, who has:

1. Received six (6) cumulative months of K-TAP assistance; and

2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2.016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual pursuant to 921 KAR 2:016, Section 1(21); or

(b) Penalized individual pursuant to 921 KAR 2:016, Section 1(19).

Section 21. Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 22. Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 23. Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 24. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and concerns identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often that every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 17 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 20 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-1C Supplement D, Qualifying Parent Eligibility", edition 10/06 [~~6/05~~];

(b) "PA-14, Declaration of Citizenship or Alien Status", edition 10/06 [~~6/05~~];

(c) "PA-33D, Child's Certification of School Enrollment/Attendance", edition 10/06 [~~6/05~~];

(d) "PA-121, Good Cause Claim/Determination", edition 10/06 [~~6/05~~];

(e) "PA-202TP, Teen Parent Personal Responsibility Plan", edition 10/06 [~~6/05~~];

(f) "CS-333, Facts About the Child Support Program for K-TAP and Kinship Care Recipients", edition 6/05[~~"~~]; and

(g) "[~~CS-331~~]CS-333.1, Facts About the Right to Claim Good Cause", edition 6/05[~~"~~].

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner
APPROVED BY AGENCY: September 28, 2006

FILED WITH LRC: September 29, 2006 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006 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 November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. 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: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding technical eligibility for K-TAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements for technical eligibility for K-TAP, the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619. This administration regulation sets forth these standards in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes K-TAP technical eligibility requirements. The administrative regulation establishes the technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation in child support activities, minor teenage parent provisions, and time limitations for eligibility for K-TAP 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 amendment to this administrative regulation requires disqualified parents, who are ineligible for TANF assistance (i.e., fleeing felons, drug-related felons, and persons ineligible because of past fraud), to participate in the Kentucky Works Program as regulated in 921 KAR 2:370, Technical Requirements for Kentucky Works. This amendment also clarifies exceptions to the 60-month lifetime limit on the receipt of TANF benefits and makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the changes in the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171) and related interim federal regulations, released June 29, 2006, which reauthorized the TANF block grant under Title IV-A of the Social Security Act. The amendment is necessary to avoid state penalties associated with non-compliance with these new federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619 by clarifying technical eligibility requirements for K-TAP recipients, the reasons in which a case may receive an extension of benefits beyond the 60-month lifetime limit of receipt, and making technical corrections to comply with KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes K-TAP technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age cooperation in child support activities, and time limitation for eligibility for K-TAP benefits. The amendment to this administrative regulation clarifies policy for those who may be eligible for K-TAP assistance.

(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 families who are receiving assistance from K-TAP. As of June 2006, there were 27,809 families receiving K-TAP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parents, who are ineligible to receive K-TAP assistance (i.e., fleeing felons, drug-related felons, and persons ineligible because of past fraud), will now be required to participate in the Kentucky Works Program and included in the work participation rate. In order for a case to receive an extension of benefits beyond the 60-month lifetime limit, the work-eligible individual will be required to meet one of the reasons for extension as specified in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By amending this administrative regulation, the state will avoid financial penalties. Additionally, ineligible parent recipients will now receive the same supportive services as parent recipients in their efforts to become self-sufficient prior to reaching the 60-month lifetime limit of receipt.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no accrued benefits to the entities as a result of compliance.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A and state general funds used to meet Maintenance of Effort requirements are the funding source for this administrative regulation.

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

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

(9) TIERING. Is tiering applied? Tiering is not applied, since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619, Pub. L. 109-171.

2. State compliance standards. KRS 194A.050(1), 205 200(2), (3), and 205 2003(1).

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with

the 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 impose stricter, additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601 to 619, and Pub. L. 109-171.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 2006 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational since October 2006. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational October 2006. This amendment will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:370. Technical requirements for Kentucky Works.

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651 to 678, 42 U.S.C. 601-619, 12101 to 12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-171

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means eligible child care pursuant to 45 C.F.R. Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(5) "Community service" is defined in 45 C.F.R. 261.2(h).

6. "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(7) [~~(6)~~] "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) [~~(7)~~] "Constant care" means active care for a family [~~household~~] member living in the home by a work-eligible [~~an~~] individual other than the time:

(a) The family [~~household~~] member spends sleeping; or

(b) In which the family household member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.

(9) "Disability" is defined by 42 U.S.C. 12102(2)(A). Major activities of living may include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

(10) [~~(8)~~] "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(11) "Family member" means an individual related by blood, marriage, or adoption.

(12) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;

2. A general educational development (GED) program; or

3. A literacy program;

(b) A semester system in a college or university of:

1. Twelve (12) semester hours or more; or

2. Six (6) semester hours or more during the summer term;

(c) The equivalent in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(13) "Job search and job readiness assistance" is defined in 45 C.F.R. 261.2(g).

(14) "Job skills training directly related to employment" is defined in 45 C.F.R. 261.2(i).

(15) [~~(9)~~] "Kentucky Transitional Assistance Program" or "(K-TAP)" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.

(16) [~~(10)~~] "Kentucky Works" means a program that assists[~~: (a)~~] a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance[~~, or~~

~~(b) A former K-TAP recipient with a job retention service~~].

(17) "On-the-job training" is defined in 45 C.F.R. 261.2(f).

(18) [~~(11)~~] "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined in 921 KAR 2:016, Section 1(10)(b) or (c).

(19) [(12)] "Reasonable distance" means the distance customarily available within a locality.

(20) "Subsidized employment" is defined in 45 C.F.R. 261.2(c) and (d).

(21) "Unsubsidized employment" is defined in 45 C.F.R. 261.2(b).

(22) [(13)] "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(23) [(14)] "Vocational education" is defined in 45 C.F.R. 261.2(i) [means a training program that prepares the individual for employment].

(24) [(15)] "Wage supplementation" means a component in which an employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.

(25) "Work-eligible individual" is defined in 45 C.F.R. 261.2(n).

(26) [(16)] "Work Experience Program" or "WEP" is defined in 45 C.F.R. 261.2(e) [means a component which provides in-state work experience to assist a participant in obtaining regular public or private employment].

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual [An adult and teenage parent Kentucky Transitional Assistance Program recipient shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation.

(2) An adult Kentucky Transitional Assistance Program recipient who does not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program] as follows:

(a)1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to have at least a minimum of:

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents with the number of hours required of each parent as follows:

a. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education; and

b. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an activity pursuant to paragraph (c)1 through 4 and 6 of this subsection.

2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 [9] of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2.006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2.006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, [An activity] to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service,
7. Full-time enrollment progressing satisfactorily, as defined by the educational institution or program [school], in [postsecondary or] vocational education not to exceed twenty-four (24) cumulative months during which the participant will not be required to participate in other activities;
8. Full or part-time enrollment, progressing satisfactorily, as defined by the educational institution or program [school], in [postsecondary or] vocational education at any time when combined with an activity pursuant to paragraph (c)1 through 4 and 6 of this subsection;
9. [Satisfactory] Attendance at secondary school or equivalent if the recipient:

a. [In the case of a recipient who] Has not completed secondary school or equivalent;

b. Couples the attendance [coupled] with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;

c. Makes satisfactory progress as defined by the educational institution or program in accordance with 45 C.F.R. 261.2(i);

10. Provision of child care services to an individual participating in community service;

11. Job skills training directly related to employment;

12. Based on the findings of the assessment, an allowable [placement in a work] preparation activity that includes:

a. Domestic violence counseling;
b. Life skills training;
c. A substance abuse program;
d. Mental health counseling;
e. Vocational rehabilitation;
f. Literacy; or
g. Adult education; and

13. [12.] Wage supplementation, which:

a. May be available in limited areas and may expand into additional areas; and

(b) Shall not commence until the participant has signed form "KW-230, Wage Supplementation Program Participant Agreement"[;

13. Participation in a work program approved by the cabinet in accordance with this paragraph; and

14. Participation in an activity approved by the cabinet in accordance with this paragraph].

(2) Excused absences shall:

(a) Include:

1. Scheduled hours missed due to holidays; and

2. A maximum of ten (10) additional days of excused absences in any twelve (12) month period with no more than two (2) days occurring in a month; and

(b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following verification:

(a) "PA-33, Verification of Transportation and Participation in Education or Training Activity"; or

(b) "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity".

Section 3. Exceptions to Program Participation. (1) A Work-eligible individual shall be deemed to be engaged in work for a month in a fiscal year if the individual:

(a) Is a head of household;

(b) Has not obtained a high school diploma or a GED;

(c) Has not attained twenty (20) years of age; and

(d)1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or

2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress. [A Kentucky Transitional Assistance Program recipient who is a head of household, who has

~~not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for a month in a fiscal year if the recipient:~~

~~(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or~~

~~(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.]~~

(2)(a) A work-eligible individual [~~An adult Kentucky Transitional Assistance Program recipient~~] shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual [~~adult~~] is:

1. A single custodial parent; and

2. Caring for a child who has not attained twelve (12) months of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or

2. Cumulative.

(3)(a) For a work-eligible individual whose [~~Kentucky Transitional Assistance Program recipient where~~] compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP [~~Kentucky Transitional Assistance Program~~] applicant or work-eligible individual [~~recipient~~] is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2.006, Section 23(1).

(4) A work-eligible individual [~~Kentucky Transitional Assistance Program recipient~~] shall be deemed to be engaged in work for a month if the individual [~~recipient~~] is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) In accordance with 45 C.F.R. 291.2(n)(2)(i), the cabinet shall exclude from program participation an individual providing constant care for more than eight (8) consecutive weeks to a disabled family member as verified by the completion of the "PA-4, Statement of Required Caretaker Services".

(6) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee [~~another entity designated by the cabinet~~] shall make an assessment of the work-eligible individual's employability on "KW-200, Kentucky Works Assessment Form".

(b) The cabinet shall request other agencies to assist in the assessment process as needed.

(c) The assessment shall include:

1. Consideration of basic skills;

2. Occupational skills; and

3. Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual [~~participant~~] shall jointly develop a self-sufficiency plan by completing the "KW-202, K-TAP Transitional Assistance Agreement". This plan shall contain:

(a) An employment goal for the individual [~~participant~~];

(b) A service to be provided by the cabinet including child care;

(c) An activity to be undertaken by the individual [~~recipient~~] to achieve the employment goal; and

(d) Other needs of the family.

(3) Work-eligible individuals [~~Recipients~~] shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:

(a) "KW-105, Kentucky Works Referral Form (Participant)";

(b) "PA-218A, New Chance Referral"; or

(c) "KW-246, WEP Referral Form".

(4) An adult applicant or recipient of the K-TAP benefit group shall register for work using form "PA-511, Workforce Kentucky Customer Registration" except for a member who is:

(a) Under age eighteen (18);

(b) Age sixty (60) or over;

(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to Section 1(13) of 921 KAR 2:016;

(d) Receiving benefits based on 100 percent disability;

(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or

(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a work-eligible individual or a Kentucky Works participant;

(b) At the request of a service provider; or

(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee [~~contractor~~].

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

(4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form "KW-204, Conciliation Contact ".

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(5) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation on form "KW-205, Conciliation Results".

Section 6. Excused from Penalties. (1) A work-eligible individual [~~recipient~~] shall be excused from a penalty for failure to comply with the Kentucky Works Program, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;

2. Cannot locate child care at a reasonable distance from home;

3. Determines the unsuitability of informal child care; or

4. Cannot locate affordable child care arrangements;

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the individual [~~applicant or recipient~~];

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet;

(f) The individual [~~A recipient~~] is required to provide constant care, not to exceed eight (8) consecutive weeks, [~~for at least six (6) hours daily~~] for a family [~~household~~] member [~~who is a parent, spouse, or child~~] with a disability as documented by medical evidence using the PA-4 [~~or by a reliable information source, as verified by the cabinet, and no alternative care arrangement is available~~];

(g) The individual [~~participant~~] is temporarily incarcerated or institutionalized for thirty (30) days or less;

(h) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious belief;
7. National origin; or
8. Political belief;

(i) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(j) Wage rate is decreased subsequent to acceptance of employment;

(k) The individual [participant] accepts a better job that, because of a circumstance beyond the control of the individual [recipient], does not materialize; or

(l) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the [an] individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual [Kentucky Transitional Assistance Program recipient] fails to comply with a requirement of the Kentucky Works Program, the recipient shall be subject to a Kentucky Works and Kentucky Transitional Assistance Program penalty. Failure to comply shall be found if the work-eligible individual [recipient]:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Fails to register for work unless an exception in Section 4(4) of this administrative regulation applies.

(2)(a) Except for a requirement listed in paragraph (b) of this subsection, a work-eligible individual [K-TAP recipient] who has failed to comply with a Kentucky Works requirement without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to Section 4(4) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis.

(b) Assistance to the benefit group shall be discontinued if the work-eligible individual [K-TAP recipient], fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or
2. Complete an assessment, pursuant to Section 4 of this administrative regulation.
3. The penalties in paragraph (a) or (b) of this subsection shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

(4) The penalties in paragraph (a) or (b) of this subsection shall continue to be applied until the work-eligible individual [participant] complies with a program requirement.

(5) If a penalized K-TAP recipient indicates he or she will comply with program requirements, but remains noncompliant, the recipient shall be notified of the continued penalty status in writing on form "KW-211, Noncompliance Contact".

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(4) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

(a) Race;
(b) Color;
(c) Religion;
(d) Sex;
(e) National origin;
(f) Age;
(g) Disability; or
(h) Political belief or affiliation.

(6) Prior to placement in a WEP activity, a WEP participant shall sign form "KWET-240, Work Experience Training Program Participant Agreement".

(7) A training site agency shall:

(a) Complete a Department for Community Based Services questionnaire relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213 [et seq.];

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant on Form PA-33, to ensure the WEP participant's compliance with subsection (8) of this section [which shall be submitted by a WEP participant];

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to the "KWET-241, WEP Training Site Agreement", except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;
2. New task after mastery of a skill; and
3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678 [et seq.,] is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (8) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(8) The WEP participant shall submit form PA-33 completed monthly by the WEP provider pursuant to subsection (7)(e) and (f) of this section.

(9) [~~(7)~~] Changes to the KWET-241 shall be established in writing on form "KW-244, WEP Training Site Agreement Amendment".

(10) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form "KW-245, Notice of WEP Discontinuance".

(11) [~~(8)~~] A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

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

(a) "KW-105, Kentucky Works Referral Form (Participant)", edition 10/06 [~~1/06~~];

(b) "KW-200, Kentucky Works Assessment Form", edition 1/06;

(c) "KW-202, K-TAP Transitional Assistance Agreement", edition 10/06 [~~1/06~~];

(d) "KW-204, Conciliation Contact", edition 10/06 [~~1/06~~];

(e) "KW-205, Conciliation Results", edition 10/06 [~~1/06~~];

(f) "KW-211, Noncompliance Contact", edition 10/06 [~~1/06~~];

(g) "KW-230, Wage Supplementation Program Participant Agreement", edition 10/06 [~~1/06~~];

(h) "KW-244, WEP Training Site Agreement Amendment", edition 1/06;

(i) "KW-245, Notice of WEP Discontinuance", edition 10/06;

(j) "KW-246, WEP Referral Form", edition 10/06 [~~1/06~~];

(k) [~~(j)~~] "KWET-240, Work Experience Training Program Participant Agreement", edition 1/06,

(l) [~~(k)~~] "KWET-241, WEP Training Site Agreement", edition 10/06 [~~1/06~~];

(m) "PA-4, Statement of Required Caretaker Services", edition 10/06;

(n) [~~(l)~~] "PA-33, Verification of Transportation and Participation in Education Training Activity", edition 10/06 [~~1/06~~];

(o) [~~(m)~~] "PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity", edition 10/06 [~~1/06~~];

(p) [~~(n)~~] "PA-218A, New Chance Referral", edition 10/06 [~~1/06~~]; and

(q) [~~(o)~~] "PA-511, Workforce Kentucky Customer Registration", edition 1/06.

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

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON, JR., Commissioner

APPROVED BY AGENCY: September 28, 2006

FILED WITH LRC: September 29, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLICT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006 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 November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. 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, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements of activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation conforms to the content of the authorizing statutes by establishing the technical requirements and allowed activities of the KWP. The KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Title IV-A of the Social Security Act (a.k.a., the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619). This administration regulation sets forth these standards in conformity with the Title IV-A or TANF State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation, and penalties for failure to participate without good cause.

(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 comply with the Deficit Reduction Act of 2005 (Pub. L. 109-171), which reauthorized TANF, and related interim federal regulations released June 29, 2006. The amendment clarifies the families who are required to participate in an activity, adds new definitions for the countable activities, enhances verification and monitoring of the required activities to bring Kentucky's TANF program into compliance with federal funding requirements, and makes technical corrections to conform with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the programmatic changes contained within the new federal regulations implementing TANF's Reauthorization.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619, Pub. L. 109-171, and the interim federal regulations implementing TANF's Reauthorization by clarifying technical eligibility requirements of KWP.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program. The amendment assists in the effective administration of the statutes through its incorporation of federal requirements necessitated by TANF's Reauthorization.

(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 families who are receiving assistance from K-TAP and are required to participate in KWP. As of June 2006, there were 27,809 families receiving K-TAP. Of these, 12,238 individuals are required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certain parents, who receive benefits on behalf of their children, such as convicted drug felons, fugitive felons, or parents found fraudulent within K-TAP, will now be required to participate in KWP per federal regulations. Individuals required to participate in KWP must ensure their activities and time spent in those activities fall within the federal requirements to maintain K-TAP benefit levels. Verification and documentation of all hours of participation have been enhanced and will be facilitated by service providers and community partners.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By amending this administrative regulation, the state will avoid financial penalties, and KWP participants will maintain benefit levels. Ultimately, KWP participants should achieve the overall goal of self-sufficiency.

As a result of compliance, what benefits will accrue to the entities identified in question (3):

(c) By amending this administrative regulation, the state will avoid financial penalties, and KWP participants will maintain benefit levels. Ultimately, KWP participants should achieve the overall goal of self-sufficiency.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A and state general funds used to meet Maintenance of Effort requirements are the sources of funding for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619.

2. State compliance standards. KRS 194A.050(a), 205.200(2), 205.200(7), and 205 2003

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 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 impose stricter, additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Family Support, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601 to 619, and Pub. L. 109-171.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue in the first year or subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This program has been operational since October 1996. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since October 1996. This amendment will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:400. Supportive services.

RELATES TO: KRS 199.011(4), 205.2003(3), 205.703, 209 020(2), 610.110(6), 45 C.F.R. Parts 260-265, 42 U.S.C. 601-679b ~~[et seq.]~~

STATUTORY AUTHORITY: KRS 194A 050(1), 605 150, 2006 Ky Acts ch 252, Part 1, H.10

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet ~~[for Health and Family Services]~~. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts Ch. 252 Part 1, H.10 requires the cabinet to promulgate an administrative regulation to implement the Foster Youth Transitional Assistance Program. This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in his home through the cabinet ~~[for Health and Family Services]~~, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined at KRS 209.020(2).

(2) "Child" is defined at KRS 199.011(4) and as extended by KRS 610.110(6).

(3) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his individual needs.

(4) "Kentucky Transitional Assistance Program" or "K-TAP"

means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2:006, Section 1(9) [(8)].

(5) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(6) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.

(7) "Preventative assistance" means a service to provide emergency funds to a family during crisis.

(8) "Safety net services" means:

(a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or

(b) Monetary benefits to assist in maintaining self-sufficiency.

(9) "Rehabilitative services" is defined at 907 KAR 3:020, Section 1(2).

(10) "Targeted case management" is defined at 907 KAR 3.020, Section 1(3).

Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if the individual or family:

(1) Makes a request for assistance for child care expenses;

(2) Needs child care for protection or prevention of child abuse, neglect or exploitation; or

(3) Needs child care for a child of a teen parent attending high school.

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380, Section 2, on behalf of a child entering out-of-home care through a:

(1) Voluntary commitment agreement; or

(2) Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

(a) Stabilizing a child in the child's own home or foster home;

(b) Preventing further hospitalization or institutionalization; and

(c) Enabling a child and the child's family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following:

(a) Mental retardation or developmental disability;

(b) Emotional or behavioral disturbance;

(c) Dual diagnosis;

(d) Risk of institutionalization; or

(e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

(a) Biological home;

(b) Foster home; or

(c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

(a) A comprehensive assessment, to include:

1. Review of medical, psychiatric, social and educational assessments conducted within the last twelve (12) months; and

2. An in-home assessment;

(b) When appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child and the hospital or institution to ensure:

1. A coordinated approach upon discharge; and

2. That communication is clear regarding behaviors, goals, and recommended interventions;

(c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;

(d) Family intervention services such as behavioral and family counseling to assist a child and family in:

1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or

2. Eliminating barriers to change;

(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;

(f) A paraprofessional attendant to provide direct in-home services to a child, a biological or foster parent, as identified in the case plan;

(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

(h) Art or music therapy from a qualified professional;

(i) Educational consultation and support;

(j) Crisis intervention;

(k) Skill development; or

(l) Other service identified in the case plan.

(6) The type, frequency, intensity and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

(a) Family strengths and needs;

(b) Goals, objectives, and tasks;

(c) Time frames; and

(d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

(a) Has total income at or below 200 percent of federal poverty level; and

(b) Is no longer eligible for K-TAP benefits due to:

1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2)(b); or

2. Reaching benefit time limitations established at 921 KAR 2:006, Section 20 [19].

(2) A safety net service shall include contact with the family and may address the following:

(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;

(b) Linkage to the appropriate resources; and

(c) Intervention in a crisis situation including:

1. Fuel shortage;

2. Utility shutoff;

3. Insufficient food, clothing, housing, or employment; or

4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family's safety net services

(b) Up to a total of $635 may be paid over a period of four (4) months during a twelve (12) month period.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services' conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

Section 7. Preventative Assistance. (1) Preventative assistance services shall be provided in order to:

(a) Assist an individual who is identified at-risk and is in need of protective services intervention;

(b) Prevent the removal of a child from his home; or

(c) Facilitate the return of a child to his natural parents.

(2) Preventative funds may be utilized for:

(a) Shelter;

(b) Food;

(c) Clothing;
(d) Utilities, and
(e) Other necessary services.
(3) The cabinet may authorize up to $500 in a state fiscal year to the appropriate vendor for a family.

Section 8. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:
(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2.006, Section 24 [23], and, if necessary, shall offer protective and general adult services; and
(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:
(a) Is in a domestic violence situation; and
(b) Has agreed to services.

Section 9. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent who is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of his safety, including assistance with an alternative living arrangement if necessary.
(2) The cabinet shall:
(a) Conduct a face-to-face contact with the minor teenager's parent and the minor parent's child;
(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent's current situation and the safety issues for the minor teenage parent and child;
(c) Determine if the minor teenager's parent or guardian accepts the minor teenager's living arrangement;
(d) Refer the family to the appropriate services;
(e) Provide the following to the Division of Family Support:
1. Identification of safety issues;
2. A recommendation regarding opening a protective or preventive services case on the family; and
3. Services to which the minor teenage parent has been referred.

Section 10. Foster Youth Transitional Assistance (1) In accordance with 2006 Ky. Acts ch. 252, Part 1, H.10, grants or vouchers from the Foster Youth Transitional Assistance program shall be provided to:
(a) A youth that is eighteen (18) to twenty-three (23) years of age; and
(b)1. Currently in foster care; or
2. Formerly in foster care.
(2) A youth shall utilize funds for transitional assistance into independence for the following:
(a) Housing;
(b) Clothing;
(c) Transportation;
(d) Tuition; or
(e) Medical and dental services; and
(f) Other expenses that the cabinet may authorize for the youth.
(3) For each fiscal year, the cabinet may authorize:
(a) Up to $7,500 per working youth; and
(b) Up to an additional $2,500 per youth while attending a:
1. Community college; or
2. Four (4) year college or university.

Section 11. Incorporation by Reference. (1) "OOHC-1275, Fact Sheet-Intensive Family-based Support Services, edition 6/99" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
TOM EMBERTON JR., Commissioner
APPROVED BY AGENCY. September 28, 2006
FILED WITH LRC: September 29, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLICT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006 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 November 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business November 30, 2006. 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, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation generally establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in his home through the cabinet, to the extent funds are available.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the provision of supportive services by the cabinet to vulnerable families.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet shall promulgate administrative regulations to operate program and fulfill responsibilities vested in the cabinet. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement provisions of KRS Chapter 605, including KRS 605.130(4) authorizing the cabinet to take measures to protect children. 2006 Ky. Acts ch. 252 Part 1, H.10 requires the cabinet to implement the Foster Youth Transitional Assistance program no later than October 1, 2006. This administrative regulation conforms to the content of the authorizing statutes by establishing supportive services available to families receiving ongoing case management or to safely maintain a child in the child's home.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by outlining supportive services offered by the cabinet to vulnerable families.
(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 adds a section to implement the Foster Youth Transitional Assistance program and makes technical corrections to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment implements the cabinet's additional supportive service of Foster Youth Transitional Assistance, as directed in 2006 Ky. Acts ch., 252 Part 1 H.10. The amendment to this administrative regulation is necessary to comply with the provisions of the 2006 Ky. Acts ch. 252 Part 1, H.10.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of 2006 Ky. Acts ch. 252 Part 1, H.10 by ensuring the cabinet has established regulatory authority to implement the Foster Youth Transitional Assistance program no later than October 1, 2006.
(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of statutes through its compliance with 2006 Ky. Acts

ch. 252 Part 1, H.10. The amendments outlines the qualification process used by the cabinet to determine whether, and to what extent, a current or former foster youth is eligible for funds for transitional assistance into independence. The amendment also makes other technical corrections to ensure compliance with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 6 vendors are presently under contract to provide independent living services through the federal Chafee Foster Care Independence Program. These existing Chafee contracts will be modified to accommodate disbursement of the 2006 Ky. Acts ch. 252 Part 1, H.10 appropriation. Approximately 100-150 current or former foster youth will benefit from an expansion of these services through state Foster Youth Transitional Assistance program expenditures.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Existing Chafee Foster Care Independence Program vendors will have to take the actions of accepting modifications of their contracts to provide and receive reimbursement for, any additional independent living services under the Foster Youth Transitional Assistance program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Existing Chafee Foster Care Independence Program vendors will be completely reimbursed for the provision of any additional independent living services under the Foster Youth Transitional Assistance program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Existing Chafee Foster Care Independence Program vendors will be completely reimbursed for the provision of any additional independent living services under the Foster Youth Transitional Assistance program.

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

(a) Initially: The Foster Youth Transitional Assistance Program, established through HB 380 2006 GA provides $1 million dollars in each SFY 2007 and SFY 2008 to be distributed in assistance grants or vouchers to current or former foster youth ages 18 through 23 for transitional assistance into independence. No additional administrative costs are being withheld by the cabinet.

(b) On a continuing basis: The Foster Youth Transitional Assistance Program, established through HB 380 2006 GA provides $1 million dollars in each SFY 2007 and SFY 2008 to be distributed in assistance grants or vouchers to current or former foster youth ages 18 through 23 for transitional assistance into independence. No additional administrative costs are being withheld by the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund – 100%.

(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 change to 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 establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering as this administrative regulation will be implemented statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.150, and 2006 Ky. Acts ch. 252 Part 1, H.10.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will require no additional costs for administration.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

OFFICE OF THE GOVERNOR
Kentucky Department of Veterans' Affairs
(New Administrative Regulation)

17 KAR 3:010. Calculation of resident charges at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325
STATUTORY AUTHORITY: KRS 40.325(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well being of elderly and disabled veterans within state veterans' nursing homes. KRS 40 325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statues and regulations. This administrative regulation establishes the requirements for calculating resident charges for room and care services within the state veterans' nursing homes.

Section 1. Definitions. (1) "Ability to pay" means the total amount of available assets and available monthly income on the part of the resident and spouse.

(2) "Administrator" means the person in charge of a state veterans' nursing home, or that person's specific designee.

(3) "Assets" means the market value of items owned by the resident and spouse as applicable including:

(a) Stocks, bonds, and notes;
(b) Individual retirement accounts;
(c) Bank deposits;
(d) Savings accounts;
(e) Cash;
(f) Real estate;
(g) Cash value of life insurance policies; or
(h) Face value of prepaid burial plans.

(4) "Available assets" means total assets of the resident and spouse less the applicable exclusions specified in Section 2(5) of this administrative regulation.

(5) "Available monthly income" means gross monthly income of the resident and spouse less the applicable exclusions specified in Section 2(4) of this administrative regulation.

(6) "Community spouse" means the spouse of a resident who is not herself or himself a resident of the state veterans' nursing home.

(7) "Department" means the Kentucky Department of Veterans' Affairs.

(8) "Dependent" means an individual less than eighteen (18) years of age who is in the resident's care.

(9) "Exclusions" means an amount deducted from a resident and spouse's gross monthly income and total assets to determine the ability to pay for services rendered by a nursing home.

(10) "Gross monthly income" means the amount of income received by the resident and spouse on a monthly basis plus those amounts originally withheld from wages and earnings.

(11) "Income" means funds received by the resident and spouse and shall include the following:

(a) VA, U.S. Civil Service, U.S. Railroad, Military, Social Security, and any other form of compensation and pension;
(b) Wages from all employers;
(c) Interest and dividends;
(d) Workers compensation; and
(e) Rental or other business income.

(12) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(13) "Resident" means a veteran admitted to a state veterans' nursing home.

(14) "Spouse" means the wife or husband of a resident who is not divorced or legally separated from the veteran.

(15) "Withholdings" means those dollar amounts originally deducted from monthly income, which shall be added back in to determine gross monthly income. Examples of withholdings include the following:

(a) Deductions for income taxes;
(b) Deductions for health and life insurance premiums; and
(c) Deductions for retirement plans.

Section 2. Determination of the Ability to Pay for Services Rendered at State Veterans' Nursing Homes. (1) The nursing home shall compute the ability to pay for each resident who is admitted to the facility for care.

(2) The amount a resident is required to pay for services shall be the lesser of:

(a) The maximum charge specified in 17 KAR 3 020; or
(b) The amount resident is deemed able to pay in accordance with this administrative regulation.

(3) The nursing home shall determine an ability to pay amount for each resident based on the following factors:

(a) Available assets; and
(b) Available monthly income.

(4) The following shall be authorized exclusions from gross monthly income:

(a) Medicare B insurance premium (resident only);
(b) Health insurance premium (resident only), not to exceed $150 per month;
(c) A resident's personal needs allowance of $150 per month;
(d) A maintenance allowance for a community spouse of $1,500 per month;
(e) A maintenance allowance of $400 per month for each dependent;
(f) Court-ordered support payments to an ex-spouse, not to exceed $400 per month; or
(g) Court ordered support payments for a child less than eighteen (18) years of age, not to exceed $400 per child per month.

(5) The following shall be authorized exclusions from assets:

(a) Primary residence (including any contiguous land);
(b) A resident burial exclusion consisting of cash, life insurance policy, or prepaid burial plan with a combined value of $10,000 or less;
(c) A spousal exclusion consisting of an allocation of assets totaling $100,000 (or a lesser amount if sufficient assets are not available) on the date the resident is admitted;
(d) All household equipment and personal effects owned by the resident and spouse;
(e) One (1) automobile; and
(f) Any outstanding debts on the day of admission to the nursing home.

(6) If it is determined that a resident disposed of a nonexcluded asset by gift, or for an amount less than market value, during the two (2) year period preceding the date of admission, the monthly charge for room and care shall be computed as if the resident retained ownership of the asset as of the date of admission.

(7) The monthly spousal allowance and dependent's allowance shall be utilized by the resident to help meet the financial needs of his or her spouse or dependent. If the facility becomes aware that these allowances are not being utilized for their intended purpose, the resident's monthly charge for room and care shall be recalculated as if the resident were unmarried and without dependents.

(8) If a married couple is admitted to a nursing home, the monthly charge shall be computed as if each resident were unmarried and without dependents. All assets and debts of the residents shall be allocated at a rate of fifty (50) percent to each individual. All income earned by the couple shall be considered to be earned at a rate of fifty (50) percent to each. Only one (1) primary residence and one (1) automobile shall be excluded for purposes of computing available assets for the couple.

Section 3. Calculation of the Amount Resident is Able to Pay. (1) The nursing home shall calculate the ability to pay amount utilizing the "Ability to Pay Worksheet". The form shall be explained to the resident or person responsible for the resident and signed by all parties. A copy of this form shall be provided to the resident or person responsible for the resident.

(2) The amount of available assets shall be determined as follows:

(a) Calculate the total amount of assets owned by the resident

and spouse;

(b) Apply the exclusions identified in Section 2(5) of this administrative regulation; and

(c) The remaining assets shall equal the available assets.

(3) The amount of available monthly income shall be determined as follows:

(a) Determine the amount of total monthly income for the resident and spouse;

(b) Identify all withholdings and add that total to total monthly income to determine gross monthly income;

(c) Apply the exclusions identified in Section 2(4) of this administrative regulation to the gross monthly income total; and

(d) The remaining income shall equal the available monthly income.

(4) The resident's monthly charge for room and care shall be computed as follows:

(a) Add the available assets to the available monthly income to determine the ability to pay amount:

(b) If the ability to pay amount is between $0 and the facility's maximum charge, the resident's monthly charge shall equal the ability to pay amount; and

(c) If the ability to pay amount is equal to or greater than the facility's maximum charge, the resident's monthly charge shall equal the facility's maximum charge.

(5) After the resident's ability to pay is determined, a "Patient or Responsible Party Financial Agreement" form shall be completed. The form shall be explained to the resident and signed by all parties. If the resident or person responsible for the resident refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall result in the resident paying the maximum charge for room and care.

Section 4. Revisions to Ability to Pay Amounts. (1) Nursing home staff shall update a resident's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

(a) Income revisions;

(b) Asset revisions including exhaustion of available assets;

(c) Changes in allowed exclusions; or

(d) Identification of previously undisclosed income or assets.

(2) Upon a change in the ability to pay information, a revised "Ability to Pay Worksheet" shall be prepared along with a revised "Patient or Responsible Party Financial Agreement" form. The revised forms shall be presented to the resident in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) Failure of the resident to disclose financial information required to compute his or her ability to pay shall result in the resident paying the maximum charge for room and care.

(2) If the resident or person responsible for the resident fails to sign the assignment provision contained in the "Patient or Responsible Party Financial Agreement" form, the maximum charge for room and care shall be assessed.

Section 6. Payment Hardship and Appeal Procedures. (1) Payment hardships.

(a) If the resident or person responsible for the resident believes that the ability to pay amount will result in a financial hardship, the resident or responsible person may request to make installment payments.

(b) This request shall be made in writing to the nursing home's administrator and shall include documentation to support the claimed hardship.

(c) The administrator shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request

(2) Appeals.

(a) If the resident or person responsible for the resident is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, the resident or person responsible for the resident may appeal the determination to the Executive Director, Office of Kentucky Veterans' Centers, 1111 Louisville Road, Frankfort, Kentucky 40621, within thirty (30) days of the ability to pay or payment plan being calculated.

(b) The executive director shall review the appeal and issue a determination within fifteen (15) days of receipt.

(c) If the resident or person responsible for the resident is dissatisfied with the informal resolution, the resident or person responsible for the resident may file an appeal within thirty (30) days of the executive director's response to the Commissioner, Kentucky Department of Veterans Affairs, 1111 Louisville Road, Frankfort, Kentucky 40621. If the commissioner is unable to resolve the appeal request informally, he shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the resident's or responsible person's position and include all necessary supporting documentation.

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

(a) OKVC Form #2, "Ability to Pay Worksheet", (October 10, 2006); and

(b) OKVC Form #3, "Patient or Responsible Party Financial Agreement", (October 12, 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: October 12, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2006 at 9 a.m. at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: David Huddleston, Executive Director, Office of Kentucky Veterans Centers, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9281, fax (502) 564-4036.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Huddleston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the methodology for determining a veteran's ability to pay for room and care in the state veterans' nursing homes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that resident charges are computed in a fair and equitable manner according to each veteran's ability to pay.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statues and regulations. This administrative regulation establishes the requirements for calculating resident charges for room and care services within the state veterans' nursing homes.

(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

statutes by standardizing and streamlining the manner in which monthly resident charges are computed throughout the state veterans' nursing homes.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations or state and local government affected by this administrative regulation: There are 3 state-operated facilities affected by this administrative regulation. This administrative regulation will affect all veterans admitted to facilities operated by the department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because this administrative regulation codifies the existing departmental policy for calculating resident charges for room and care services, no action will be required on the part of residents or staff members of the 3 state veterans' nursing homes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs to residents or staff members will be generated by complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3); Compliance with this administrative regulation will ensure that resident charges are computed in a fair and equitable for all veterans according to their ability to pay.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency funds. The facilities operated by the department will be required to compute appropriate charges for each resident admitted to the nursing home and ensure that these charges are collected in a timely manner.

(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 by this administrative regulation, because functions of billing and financial recording keeping for state-operated facilities are already in place.

(8) State whether of not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established fees by codifying the existing departmental policy for computing room and care charges within the state veterans' nursing homes. No fees are increased directly or indirectly by this administrative regulation as the facilities' maximum charge is addressed separately in 17 KAR 3:020.

(9) TIERING: Is tiering applied? No tiering was applied in this administrative regulation as an ability to pay amount is calculated for each resident who is admitted to the state-operated facilities. Failure of the resident to disclose financial information required to compute his or her ability to pay shall result in the resident paying the maximum charge for room and care services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Veterans Affairs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.325(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(b) How much will it cost to administer this program for the first year?

(c) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Because this administrative regulation codifies the existing departmental policy for calculating resident charges for room and care services, no additional revenue will be generated by this program. Likewise, no new costs to the administrative body will be generated by administering the program.

OFFICE OF THE GOVERNOR
Kentucky Department of Veterans' Affairs
(New Administrative Regulation)

17 KAR 3:020. Maximum charge for room and care at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statues and regulations. This administrative regulation establishes the maximum monthly resident charge for room and care at state veterans' nursing homes.

Section 1. Definitions. (1) "Daily cost of care" means the total annual expenditures on nursing home operations divided by the total number of resident care days provided by the three (3) nursing homes during the course of the fiscal year.

(2) "Department" means the Kentucky Department of Veterans' Affairs.

(3) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans Affairs.

(4) "Resident" means a veteran admitted to a state veterans' nursing home.

Section 2. Maximum Monthly Resident Charge. (1) The maximum charge for room and care services at the three (3) state veterans' nursing homes shall be $3,300 per month.

(2) This charge includes medical and nonmedical services provided by the nursing homes.

(3) Medical services obtained from sources other than the nursing home may result in a charge from the source of care to the resident. These medical services include:

(a) X-ray;

(b) Dental;

(c) Optometry;

(d) Hospitalization;

(e) Ambulance service;

(f) Hearing aids;
(g) Podiatry;
(h) Specialized medications not on the formulary; and
(i) Specialty care and equipment.

(4) The maximum monthly charge shall be revised periodically based on changes that occur which affect the nursing homes' expenditures or sources of income. These changes may include:

(a) Increases in the daily cost of care prompted by inflation in the cost of goods, services, and labor utilized to provide nursing care,

(b) Availability of general funds appropriated to the department by the legislature for operation of the three (3) state veterans' nursing homes; or

(c) Changes in per diem allocated by the U.S. Department of Veterans Affairs.

(5) When changes are made to the maximum monthly charge, each affected resident shall be notified in writing at least thirty (30) days prior to the change taking effect.

LESLIE E. BEAVERS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 13, 2006 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2006 at 9 a.m. at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. David Huddleston, Executive Director, Office of Kentucky Veterans Centers, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9281, fax (502) 564-4036.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Huddleston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum monthly charge for room and care services at state veterans' nursing homes. This maximum charge will be applied uniformly in determining a veteran's ability to pay for nursing home care in accordance with 17 KAR 3.010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that facilities operated by the department maintain the financial ability to care for veterans requiring long term, nursing care services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40 325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statues and regulations. This administrative regulation establishes the maximum charge for room and care services within the state veterans' nursing homes.

(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 statutes by establishing a standardized monthly resident charge throughout the state veterans' nursing homes.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations or state and local government affected by this administrative regulation: There are 3 state-operated facilities affected by this administrative regulation. This administrative regulation primarily affects the 125 veteran residents of department facilities who have the resources to pay the maximum charge for their care.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required on the part of our veteran residents. Staff members of the 3 state veterans' nursing homes will be required to update literature and computer systems to reflect the $3,300 per month maximum monthly charge established by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation will be an additional $200 per month for the 125 residents who pay the current maximum charge of $3,100 per month.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3); This administrative regulation will ensure that state-operated facilities have sufficient revenues to maintain the high quality of care that is currently provided to all residents regardless of income.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency funds. The facilities operated by the department will be required to change the charge rates in their billing and record keeping systems.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: This administrative regulation increases the maximum charge rate for the 3 state veterans' nursing homes. This increase is necessary in order to continue the provision of long-term nursing home care at current levels. No increase in funding will be required to implement this administrative regulation, because functions of billing and financial recording keeping for state-operated facilities are already in place.

(8) State whether of not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees by codifying the existing departmental policy for determining the maximum monthly room and care charge for the state veterans' nursing homes. Fees are increased by $200 per month for the 125 residents who pay the current maximum charge of $3,100 per month.

(9) TIERING: Is tiering applied? No tiering was applied in this administrative regulation as the maximum monthly charge at the 3 state veterans' nursing homes is applied uniformly to all veterans in determining their ability to pay for nursing home care in accordance with 17 KAR 3.010.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Veterans' Affairs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 40.325(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? $150,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $300,000

(c) How much will it cost to administer this program for the first year? No new costs are incurred by the administrative body through compliance with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No new costs are incurred by the administrative body through compliance with this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)

201 KAR 9:307. Fee schedule regarding athletic trainers.

RELATES TO: KRS 311.901(1)

STATUTORY AUTHORITY: KRS 311.901(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) authorizes the board to promulgate administrative regulations necessary to establish fees relating to the certification and regulation of athletic trainers. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Athletic Trainers. (1) Fee for initial issuance of regular certificate - $100.

(2) Fee for renewal of certificate, three (3) year period - fifty (50) dollars.

(3) Fee for reregistration of an inactive certificate - fifty (50) dollars.

(4) Issuance of duplicate wallet card - one (1) dollar.

(5) Issuance of duplicate wall certificate - ten (10) dollars.

(6) Verification of state certificate to another licensing agency - ten (10) dollars.

DANNY M. CLARK, M.D., President

APPROVED BY AGENCY: October 10, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2006 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2006, 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees associated with the certification and regulation of athletic trainers. It increases the fee for an initial athletic trainer certificate and renewal of the certification.

(b) The necessity of this administrative regulation: Establishes fees associated with the certification and regulation of athletic trainers. Increases the fee for an initial athletic trainer certificate and renewal of the certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes fees associated with the certification of regulation of athletic trainers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes fees associated with the certification and regulation of athletic trainers.

(2) If this is an amendment to an existing 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. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes; Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes. Not applicable. 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: Approximately 50 applicants each year and approximately 300 athletic trainers currently certified in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with initial application for certification and certification renewal applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial certification fee will be increased to $100. Renewal of certification will be increased to $50.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit, because the board will be able to provide more efficient services to the entities identified above.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: Funding comes directly from applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The applicant will be responsible for the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will increase the fee for an initial certification fee and renewal of certification.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, part or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.901(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $5,000 for initial certification.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately $15,150 for renewal of certification every 3 years.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)

201 KAR 9:400. Fee schedule regarding surgical assistants.

RELATES TO: KRS 311.870(1)(f)

STATUTORY AUTHORITY: KRS 311.870(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.870(1)(f) authorizes the board to promulgate administrative regulations necessary to establish fees relating to the certification and regulation of surgical assistants. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Surgical Assistants. (1) Fee for initial issuance of regular certificate - fifty (50) dollars

(2) Fee for annual renewal of certificate (due before September 1) - twenty-five (25) dollars.

(3) Fee for late renewal between September 1 and November 29 - thirty-seven (37) dollars and fifty (50) cents.

(4) Fee for late renewal between November 30 and August 30 - fifty (50) dollars.

(5) Issuance of duplicate wallet card - one (1) dollar.

(6) Issuance of duplicate wall certificate - ten (10) dollars.

(7) Verification of state certificate to another licensing agency - ten (10) dollars.

DANNY M. CLARK, M.D., President

APPROVED BY AGENCY: October 10, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2006 at 11 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2006, 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees associated with the certification and regulation of surgical assistants.

(b) The necessity of this administrative regulation: Establishes fees associated with the certification and regulation of surgical assistants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes fees associated with the certification and regulation of surgical assistants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes fees associated with the certification and regulation of surgical assistants.

(2) If this is an amendment to an existing 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 This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes; Not applicable This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes. Not applicable 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: Approximately 50 applicants each year and approximately 150 surgical assistants currently certified in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with initial application for certification and certification renewal applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial certification fee will be $50. Renewal of certification will be $25.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit, because the board will be able to provide more efficient services to the entities identified above.

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

(a) Initially: None

(b) On a continuing basis: None

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

comes directly from applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The applicant will be responsible for the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will establish initial and renewal certification fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, part or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.870(1)(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $7,200.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown at this time.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)

201 KAR 9:450. Fee schedule regarding acupuncturists.

RELATES TO: KRS 311.673(1)

STATUTORY AUTHORITY: KRS 311.673(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.673(1) authorizes the board to promulgate administrative regulations necessary to establish fees relating to the certification and regulation of acupuncturists. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Acupuncturists (1) Fee for initial issuance of regular certificate - $150.

(2) Application for a temporary certificate - seventy-five (75) dollars.

(3) Conversion from a temporary certificate to a certificate - seventy-five (75) dollars.

(4) Fee for biennial renewal of certificate - $150.

(5) Penalty fee for late renewal of certificate - fifty (50) dollars.

(6) Issuance of duplicate wallet card - one (1) dollar.

(7) Issuance of duplicate wall certificate - ten (10) dollars.

(8) Verification of state certificate to another licensing agency - ten (10) dollars.

DANNY M. CLARK, M.D., President

APPROVED BY AGENCY: October 10, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2006 at 11:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 2006, 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 November 30, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees associated with the certification and regulation of acupuncturists.

(b) The necessity of this administrative regulation: Establishes fees associated with the certification and regulation of acupuncturists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes fees associated with the certification and regulation of acupuncturists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes fees associated with the certification and regulation of acupuncturists.

(2) If this is an amendment to an existing 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. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes; Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes. Not applicable. 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: There are only ten (10) acupuncturists that currently hold temporary certification in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with initial application for certification and certification renewal applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial certification fee will be $150. Biennial renewal of certification will be $150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit, because the board will be able to provide more efficient services to the entities identified above.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: Funding comes directly from applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The applicant will be responsible for the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will establish initial and renewal certification fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, part or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.673(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $1,650.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown at this time.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:540. ICARE Program high-cost conditions.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22

STATUTORY AUTHORITY: KRS 304 2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to 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. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(2) "High-cost condition" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5)

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

Section 2. List of High-Cost Conditions. An ICARE Program high-cost condition shall:

(1) Be diagnosed or treated by a health care provider legally authorized to diagnose the condition within the past five (5) years and documented in the medical record of an eligible employee; and

(2) Include one (1) of the following medical conditions:

(a) Anoxic brain injury;

(b) Ascites;

(c) Back disorder, which shall be limited to:

1. Lumbar or Lumbosacral disc degeneration; or

2. Lumbar disc displacement;

(d) Brain tumor;

(e) Burn, which shall be limited to full-thickness skin loss;

(f) Cancer, which shall be limited to:

1. Ewing's sarcoma;

2. Hodgkin's disease;

3. Leukemia;

4. Lymphoid leukemia;

5. Malignant neoplasm of breast;

6. Metastatic cancer;

7. Myeloid leukemia; or

8. Primary cancer;

(g) Cirrhosis of the liver;

(h) Coagulation defect, including hemophilia;

(i) Endocrine disorder, which shall be limited to:

1. Insulin dependent diabetes mellitus; or

2. Enzyme deficiency disorder;

(j) Heart condition, which shall be limited to:

1. Acute myocardial infarction;

2. Angina pectoris;

3. Cardiac valve disorder;

4. Cardiomyopathy;

5. Congenital cardiac anomaly;

6. Coronary insufficiency;

7. Coronary occlusion;

8. Heart failure;

9. Injury to heart or lung;

10. Ischemic heart disease;

11. Pulmonary atresia;

12. Pulmonary hypertension; or

13. Status post open-heart surgery;

(k) Hypersomnia with sleep apnea;

(l) Lung condition, which shall be limited to:

1. Chronic airway obstruction;

2. Disease of the lung; or

3. Post inflammatory pulmonary fibrosis;

(m) Kidney condition, which shall be limited to:

1. Chronic renal failure;

2. End stage renal disease; or

3. Polycystic kidney;

(n) Morbid obesity;

(o)Multiple sclerosis;

(p) Organ or tissue replaced by transplant;

(q) Psychotic disorder;

(r) Rhabdomyolysis;

(s) Stroke; or

(t) Trauma, which shall be limited to:

1. Fracture or complete lesion of cord;

2. Motor vehicle accident; or
3. Multiple trauma.

Section 3. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 11, 2006
FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2006 at 9 am 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 November 14, 2006, five (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 November 30, 2006. 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. Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the Insurance Coverage, Affordability Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a list of 20 high-cost conditions that will be used to qualify an eligible small business employer for an ICARE Program health care incentive payment if the employer has an eligible employee who has been diagnosed with or treated for 1 of the high-cost conditions within 5 years of the employer's ICARE Program application date.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Kentucky Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the Office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based upon information received from ICARE Program participating insurers offering health benefit plans in the small group market.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions as required under 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b).

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: 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: Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program and an undetermined number of these businesses may qualify for the ICARE Program based upon an employee with a high-cost condition.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Small business employees and employers are not required to take any action due the promulgation of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Small business employees and employers will not incur any cost directly related to the promulgation of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If a small business employer has an employee with a high-cost condition as established in this administrative regulation, that small business employer may qualify for a health care incentive payment from the ICARE Program. Eligible employees with high-cost conditions who have not had employer-sponsored health insurance coverage in the past may now be eligible for and have access to coverage under an ICARE Program participating employer.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis is believed to be minimal, if any, for the Office of Insurance. However, twenty million dollars have been allocated from the General Fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The primary source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. However, twenty million dollars have been allocated from the General Fund for the ICARE Program.

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

(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 increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation establishes a list of high-cost medical conditions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability, and Relief for Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3)(b) requires the Office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based on information received from ICARE Program participating insurers offering health benefit plans in the small group market.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance should not incur costs to administer this administrative regulation for the first year. The ICARE Program will be funded by a $6.5 million appropriation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance will not incur costs to administer this administrative regulation for subsequent years. The ICARE Program will be funded by a $13.5 million appropriation for the second year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs.1-8, 13, 22

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to 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. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3) require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include:

1. Employers quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(4) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(5) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(6) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, secs. 2(3) and 4(1).

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(9) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5); and

(b) Established in 806 KAR 17:540.

(10) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(13) "Insurer" is defined in KRS 304.17A-005(24).

(14) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2).

(15) "Owner" means an individual with an ownership interest in the business.

(16) "Qualified health benefit plan" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2), the office shall consider:

(a) Individuals currently employed by the employer; and

(b) Individuals with an ownership interest.

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for an individual. To determine the average annual salary of the employer group pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(4), the office shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of eligible employees.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee without an ownership interest in the business.

Section 3. Application for Participation in the ICARE Program. (1) An eligible employer who desires to participate in the ICARE Program:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within

thirty-one (31) days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's previous ICARE Program year.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications as identified in the ICARE Program application from employees; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the office shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the employer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the office shall provide the employer with a written or electronic notification of:

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) The information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the office for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the office under the program eligibility category as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

Section 5. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the office within thirty (30) days of the date of the change.

Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the office shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the office:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in section 2 of this administrative regulation and 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8. Within thirty (30) days of receiving a request for renewal, the office shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) Upon review of a request for renewal of ICARE Program participation, the office determines that the employer ceases to meet an eligibility requirement as established in section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2006 Ky. Acts ch. 252 Part XXIII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the application to the ICARE Program;

(d) The employer requests termination from the ICARE Program; or

(e) The employer ceases business operations in Kentucky.

(2) An ICARE Program participating employer may be terminated from participation in the ICARE Program if:

(a) The employer fails to submit requested information to the office within prescribed timeframes as established in this administrative regulation;

(b) The employer fails to cooperate in an annual review as described in Section 10 of this administrative regulation;

(c) The ICARE Program funding is insufficient; or

(d) Upon completion of an annual review as established in Section 10 of this administrative regulation, the office determines that the employer did not meet the eligibility requirements of Section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8 for the ICARE Program year reviewed.

(3) Prior to terminating an ICARE Program participating employer, the office shall provide written notification to the employer, which includes:

(a) The reason for termination as identified in subsections (1) or (2) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative regulation or termination by the office pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and provide the basis for reconsideration, including any new relevant information.

(2) The office shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the office's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is received by the office from the ICARE Program participating insurer pursuant 806 KAR 17:555, section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The office shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the office based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive pay-

ment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the office all health care incentive payments received by the employer for the period of ineligibility determined by the office.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1)

Section 10. Annual Review. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:555 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 11. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

Section 12. Incorporation by Reference. (1) "ICARE-APP-1", (10/2006), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office Web site at http://doi.ppr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary Date

APPROVED BY AGENCY: October 11, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2006 at 9 a.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 November 14, 2006, 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 November 30, 2006. 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: Melea Rivera, 215 West Main Street, P.O. Box 517 Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part XXIII secs. 1-8 in creating administrative regulations to further clarify and establish the various processes for the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: 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: There are 40,716 Kentucky licensed health insurance agents who assist employers of small business obtain health insurance coverage. Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers and agents assisting employers will be required to complete the incorporated ICARE Program application and submit the application and other required documentation within the prescribed timeframes. Employers with high-cost conditions will be required to complete the ICARE Program High-Cost Condition Certification, which is part of the ICARE Program application. Additionally, an ICARE Program participating employer will be required to notify the Office of Insurance of any changes in the employers' application during the ICARE Program year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that costs associated with submitting an ICARE Program application and notifying the Office of Insurance of any changes will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents, who comply with the requirements of this administrative regulation will be able to assist small group employers who are eligible in obtaining health care incentive payments to defray some of the cost of health insurance. Employers of small groups that meet and comply with the requirements of this administrative regulation may participate in the ICARE Program and receive a monthly health care incentive payment for each eligible employee.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis are projected to be $145,670 for the Office of Insurance. $20 million have been allocated from the General Fund for the ICARE Program.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are projected to be $161,550 for the Office of Insurance. $20 million have been allocated from the general fund for the ICARE Program.

(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 will be the budget of the Office of Insurance. Twenty million dollars have been allocated from the general fund to administer the ICARE Program.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all employers who wish to qualify for the ICARE Program. Furthermore, all Kentucky licensed health insurance agents who assist employers with the ICARE Program application will be required to comply with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, on an initial basis (fiscal year 2006-07) are estimated to be $145,670 for the Office of Insurance. An appropriation of $20 million from the General Fund will fund the program for two years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, are estimated to be $161,550 for the Office of Insurance for fiscal year 2007-08. An appropriation of $20 million from the General Fund will fund the program for two years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative regulation)

806 KAR 17:555. ICARE Program requirements.

RELATES TO: KRS 304.14-120, 304.14-430 - 304.14-450, 304.17A-095 - 304.17A-0954, 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22, 42 U.S.C. sec.1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch.252, Part XXIII, secs. 2(5) and 2(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) 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. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1) requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. sec.1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(1).

(4) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(5) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(6) "Enriched health benefit plan" means a health benefit plan which:

(a) Is not a basic or consumer-driven health benefit plan; and

(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

(9) "Health risk assessment" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(4).

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

(13) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec.1 (7).

(14) "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Requirements of an ICARE Program Participating Insurer. (1) If an employer discontinues a health benefit plan offered by an ICARE Program participating insurer that is not a qualified health benefit plan and obtains coverage under a qualified health benefit plan offered by the same ICARE Program participating insurer, the insurer shall be limited to adjusting the risk factors in determining the new premium rate for the employer group to the guideline established under KRS 304.17A-0952(5)(b).

(2) An ICARE Program participating insurer shall:

(a) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the office, conduct a health risk assessment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 3(4) for each eligible employee of the employer; and

(b) Within sixty (60) days of conducting a health risk assessment as established in paragraph (a) of this subsection, and pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec 3(4), offer the following.

1. A wellness program;
2. Case management services; and
3. Disease management services.

Section 3. Qualified Health Benefit Plans. (1) An ICARE Program participating insurer shall notify the office in writing of any health benefit plans previously approved by the office that meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4). The notification shall:

(a) Include the approved form number of each health benefit plan;

(b) Identify each health benefit plan as a:

1. Consumer-driven health benefit plan;
2. Basic health benefit plan; or
3. Enriched health benefit plan; and

(c) Include a request that an identified health benefit plan be designated as a qualified health benefit plan by the office.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4), the insurer shall:

(a) Submit for approval by the office, a:

1. Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 - 304.14-450, and 806 KAR 14:007; and

2. Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable; and

(b) Include with a filing identified in paragraph (a) of this subsection, a cover letter clearly requesting that a new or amended health benefit plan be designated as a qualified health benefit plan. If the ICARE Program participating insurer has complied with subsections (1) and (2) of this section, the office shall:

(c) Designate a health benefit plan approved by the office as a qualified health benefit plan; and

(d) Notify the insurer of the office designation.

Section 4. Requirements of Disclosure. Pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1), a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format; Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621."; and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;
2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1);
3. A list of qualified health benefit plans designated by the office and offered by the insurer;
4. Limited enrollment of eligible employers under the ICARE Program; and
5. Office web site and toll-free telephone number of the ICARE Program; and

(3) Beginning on January 1, 2007, and annually thereafter, be submitted to the office for review.

Section 5. ICARE Program Data Reporting Requirements. (1)(a) No later than January 1, 2007, an ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

1. Name;
2. Telephone and fax numbers; and
3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the office within fifteen (15) days of the date of the change. Beginning on January 15, 2007, and monthly thereafter, the office shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Beginning on January 1, 2007, and monthly thereafter, each ICARE Program participating insurer shall collect the following information for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group,

(c) Name of the qualified health benefit plan covering eligible employees;

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

(f) Number of eligible employees covered under the qualified health benefit plan; and

(g) Termination date, if applicable.

(4) Beginning on January 20, 2007, and no later than the 20th day of each month thereafter, an ICARE Program participating insurer shall report to the office information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1 (10/2006).

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the office, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;
2. Name of the employer group; and
3. Average annual premium paid; and

(b) Be submitted in a format as established in the form, ICARE Report-1 (10/2006):

1. No later than February 1, for the previous calendar year; and
2. In an electronic or written format.

Section 6. Annual Office Review of ICARE Books and Records. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:545 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on January 1, 2007.

Section 8. Incorporation by Reference. (1) "ICARE Report-1", (10/2006), is incorporated by reference.

(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.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary

APPROVED BY AGENCY: October 11, 2006

FILED WITH LRC: October 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2006 at 9 a.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 November 14, 2006 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 November 30, 2006. 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: Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-051, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program as authorized under 42 U.S.C. sec 1396e and ICARE Program, data reporting, and annual review by the Office of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports, and the annual review by the office. This administrative regulation is also necessary to clarify the provisions of 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, to prevent differing interpretations among health insurers in the small group market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) 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 by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts 252, Part XXIII, sec. 8 requires the office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Additionally this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5).

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 16 insurers offering health benefit plans in the small group and employer-organized association markets.

(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, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 16 insurers that offer health insurance coverage in the small group and employer-organized association markets will be required to disclose the availability of the HIPP and ICARE Programs, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Each of the 16 ICARE Program participating insurers will also be required to file the disclosure annually with the Office of Insurance and pay a $5 forms filing fee for each form filed. Insurers will also be required to identify existing health benefit plans as the product they will offer to ICARE participating employers if designated as ICARE Program qualified health benefit plans by the Office or file new products and pay a $5 forms filing fee for each form filed and a $100 fee for each new rate filing. Finally, each ICARE Program participating insurers will be required to submit monthly and annual reports to the office and cooperate in any annual review by the office.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An ICARE Program participating insurer will be required to offer (to small group employers) health benefit plans designated as ICARE Program qualified health benefit plans and notify the Office of their unique ICARE Program plans. Currently, an insurer is required to pay a standard $5 filing fee for each new form filed with the Office and a $100 filing fee for each new rate filed. If an insurer chooses to use previously approved health benefit plans as ICARE qualified health benefit plans the insurer would not incur any costs relating to forms and rate filings. However, if an insurer chooses to create new ICARE Program qualified health benefit plans, the insurer will be required to submit the plans for approval and designation by the Office and pay the standard forms filing fee of $5 and rate filing fee of $100 for each form and rate filing submitted. Additionally, to comply with reporting and disclosure requirements, insurers may incur additional costs if their operating systems must be altered to generate reports and develop and distribute the disclosures relating to the HIPP and ICARE Programs. These costs may vary among insurers and are not available from insurers at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers will be in compliance with 2006 Ky. Acts 252, Part XXIII, secs.1 through 8 and this administrative regulation.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: Preliminary estimates of administrative costs of the ICARE Program are projected to be $145,670 for fiscal year 2006-2007 for the Office of Insurance.

(b) On a continuing basis: Preliminary estimates of administrative costs of the ICARE Program are projected to be $161,550 for fiscal year 2007-2008 for the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(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 will be the budget of the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in Office of Insurance 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 directly or indirectly increase any fees charged by the Office of Insurance.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering a health benefit plan in the small group market.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Melea Rivera

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability, and Relief to Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8 requires the Office to establish by administrative regulation the manner and content of a disclosure by insurers, offering health insurance coverage in the small group and employer-organized association markets, relating to availability of the Health Insurance Purchasing Program as authorized under 42 U.S C. sec 1396e and the ICARE Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance has estimated the costs of administering this administrative regulation to be $145,670 for the fiscal year 2006-2007.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance has estimated the costs of administering this administrative regulation for subsequent fiscal year to be $161,550.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-).Not applicable.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Human Support Services
Division of Women's Physical and Mental Health
(New Administrative Regulation)

920 KAR 3:010. Breast Cancer Research and Education Grant Program.

RELATES TO. KRS 141.446, 194A.095, 211.580, 211.585, 211.590(1), (4)

STATUTORY AUTHORITY: KRS 194A 050(1), 211.590(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.590(3) authorizes the Breast Cancer Research and Education Trust Fund Board to promulgate administrative regulations necessary to carry out the provisions of KRS 211.580 to 211.590. KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation establishes the Breast Cancer Research and Education Grant Program.

Section 1. Definitions. (1) "Applicant" means a Kentucky entity, institution, or agency offering programs or services as described in KRS 211.590(2).

(2) "Board" means the board established under KRS 211.585.

(3) "Funding" means the trust fund established under KRS 211.580.

Section 2. Application Process. (1) An applicant:

(a) May apply or reapply each year for grant funding:

1. To support the applicant's program or service in the areas established by KRS 211.590(2); and

2. By mailing to the board a completed "Breast Cancer Research and Education Trust Fund, Application for Research and Education Grant Program" grant application form:

a. Postmarked on or before the date specified in a grant notice; and

b. Addressed to the Cabinet for Health and Family Services, Department for Human Support Services, Division of Women's Physical and Mental Health, 275 East Main Street, Frankfort, Kentucky 40621; and

(b) Shall provide the board upon application with:

1. A project description as follows:

a. The need of the program or service;

b. The goals and objectives including how many people will be affected and in what geographic area;

c. The outcomes directly related to the changes or impact of the program or service,

d. An implementation plan on how the objectives will be met;

e. A timeline for implementation of the proposed program or service;

f. Plans designed to measure the success of the program or service; and

g Intent to provide semi-annual and year-end progress reports documenting satisfactory progress toward meeting the grant objectives; and

2. Financial information as follows:

a. A detailed budget of requested funds; and

b. Any other funding sources for the program or service including in-kind participation.

(2) A faxed or incomplete application shall not be considered for funding.

Section 3. Duties of the Board. (1) The board shall:

(a) Hold a meeting and conduct board business pursuant to KRS 211.585(9);

(b) Advertise a grant on the cabinet's website including:

1. A postmark date for submission of an application;
2. The mailing address for the application as specified in Section 2(1)(a)2b of this administrative regulation; and
3. An anticipated grant award date;
(c) Consider the following criteria during the application review process:
1. Relevancy to the mission of the Breast Cancer Research and Education Trust Fund;
2. Offer of a program or service in the areas of:
a. Research;
b. Education;
c. Awareness;
d. Treatment; or
e. Screening;
3. Proposal to serve the medically underserved population;
4. Proposal to address the prioritized list of programs and research projects the board has identified; and
5. Enhancement but not duplication of a program or service currently provided in the same geographic area;
(d) Review and score an application;
(e) Give first preference to programs and priorities for grant award:
1. In accordance with KRS 211.590(2)(a) and (b); and
2. According to the following priorities established by the board:
a. Disparate populations;
b. Never and rarely screened; and
c. Translational research in clinical demonstration projects; and
(f) To the extent funds are available, award a Breast Cancer Research and Education Grant:
1. To a selected applicant; and
2. Notify the applicant of the award decision:
a. Within ninety (90) days after application deadline;
b. In writing; and
c. By certified mail.
(2) The board's decision for award selection shall be final.
(3) The successful applicant shall sign and return a grant agreement:
(a) To the board; and
(b) Postmarked within two (2) weeks of receipt.
(4) If a research grant is awarded, the grant shall be contingent upon a grant recipient's appropriate Institutional Review Board approval if applicable.

Section 4. Grant Objectives Reporting. (1) A grant recipient shall provide a report to the board as specified in Section 2(1)(b)1g.
(2) A grant recipient that is determined by the board as not making satisfactory progress toward meeting grant objectives shall:
(a) Be notified in writing that objectives are not being met;
(b) Submit to the board within thirty (30) days of receiving the notice a corrective action plan addressing the objectives that are not being met; and
(c) Reimburse the board for grant funds received to date if the corrective action plan is not implemented.

Section 5. Incorporation by Reference. (1) "The Breast Cancer Research and Education Trust Fund, Application for Research and Education Grant Program", edition 12/06, is incorporated by reference.
(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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
MARLA J. MONTELL, Commissioner
APPROVED BY AGENCY: September 15, 2006
FILED WITH LRC: September 19, 2006 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2006, 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 November 14, 2006, 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 November 30, 2006. 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: Amberlee Nickell
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a competitive grant program to provide funding to not-for-profit entities, educational institutions, and government agencies in Kentucky offering programs or services in the areas of breast cancer research, education, awareness, treatment, and screening
(b) The necessity of this administrative regulation: This administrative regulation sets forth a process for applying and receiving grant funding in compliance with KRS 211.590.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 211.590 by providing grant funding to support breast cancer research, education, treatment, screening, and awareness in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the application process and requirements, sets forth program and outcome measurement requirements, establishes an application review and award process, and provides monitoring, oversight, and reporting requirements for funded programs pursuant to KRS 211.590(2)(c).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation, but is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Refer to (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Refer to (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include not-for-profit entities, educational institutions, and government agencies in Kentucky offering programs or services regarding breast cancer. They will be able to apply to receive additional funding for their program or service. The Division of Women's Physical and Mental Health will be responsible for administering the funding.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will apply each fiscal year for funding to support their program or service in the area of research, education, awareness, treatment or screening; submit all required documentation; and comply with the outcome measurement requirements set forth in their application. The Breast Cancer Research and Education Trust Fund Board will select the applicants,

and the Division of Women's Physical and Mental Health will administer the funding.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit by receiving funding to establish or support a program or service addressing breast cancer. The state will be able to address breast cancer and the need for additional research, education, awareness, treatment and screening.

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

(a) Initially: Approximately $5000.

(b) On a continuing basis. Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The breast cancer research and education trust consisting of funds collected from the income-tax check off created under KRS 141.446, and any other proceeds from grants, contributions, appropriations, or moneys made available for the purposes of the trust fund.

(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, and there are no fees in 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 establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied, since implementation of the Breast Cancer Research and Education Trust Fund Grant Program is the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Division of Women's Physical and Mental Health.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.590.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will generate no revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will generate no revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? Estimated at $5000 for the first year; however, administration costs will come from the breast cancer research and education trust fund.

(d) How much will it cost to administer this program for subsequent years? Estimated at $5000 for subsequent years; however, administration costs will come from the breast cancer research and education trust fund.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 10, 2006 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 10, 2006, at 10 00 a.m., in Room 154 of the Capitol Annex. Representative Tanya Pullin called the meeting to order, and the roll call was taken. The minutes of the September 12, 2006 meeting were approved.

Present were:

Members: Representative Tanya Pullin, 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, Kara Daniel, Ellen Steinberg, Emily Harkenrider, and Roslyn Hendrickson.

Guests: Mike Carr; Cindy Owen, Alicia Sneed, Marilyn Troupe, Education Professional Standards Board; John M. Marks, Office of Careers and Technical Education; Eddie Mattingly, Angela Robinson, Department of Revenue; Mark Brengelman, Board of Dentistry and Board of Physical Therapy; Danny Clark, M.D., Michael S. Rodman, C. Lloyd Vest II, Board of Medical Licensure; Jonathan Doran Buckley, David Cox, Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Board of Nursing; Becky Klusch, Board of Physical Therapy; Cheryl Bentley, Scott Porter, Claude Wagner, Board of Licensure and Certification for Dieticians and Nutritionists; Kristina Brunjes, Jon Gassett, Jim Lane, Morgain M. Sprague, Department of Fish and Wildlife Resources; Tom Bloemer, Mark Farrow, Wilbur Frye, Jason W. Glass, Chad Halsey, Gary Wheeler, Department of Agriculture; Lona Brewer, Chris Hall, Division for Air Quality; Amy Barker, John Dunn, Department of Corrections; Michael W. Coffey, Dana Fugazzi, Michael Hill, Mary Wade, Jim Wathen, Jess Zimmerman, Transportation Cabinet; Kevin Noland, Roy Prince, Paul McElwain, Board of Education; Chris Bischoff, Jim Nelson, Department of Libraries and Archives; D. J. Wasson, Office of Insurance; Angela Kirkland, Rob Edwards, Medicaid Services; Debbie Ball, Donna M. Collins, Bill Cooper, Shirley Eldridge, Mamie Mountjoy, Division of Aging Services; Elizabeth Caywood, Department for Community Based Services; and John Mann, Jack Mann Scales, Inc.

The Administrative Regulation Review Subcommittee met on Tuesday, October, 2006, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Kentucky Teaching Certificates

16 KAR 2:010. Teaching certificates. Alicia Sneed, director of legal services; Mike Carr, director of certification; Marilyn Troupe, director of educator preparation; and Cindy Owen, director of professional learning and assessment, represented the board.

In response to a question by Senator Tapp, Mr. Carr stated that two options for alternative certification were available for engineers who wished to become teachers. Option 1 recognized ten years of work experience and required a portfolio submission. Option 6 permitted applicants to begin teaching upon their entry into a university-based alternative certification route and was frequently used by teachers for math, science, or special education. It took about three years to finish the alternative certification program.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2:020. Occupation-based career and technical education certification.

In response to a question by Co-chair Pullin, Mr. Carr stated that individuals who begin teaching under an occupation-based or technical education certificate are required to enroll in a 64-hour university program. Some universities have been awarding credit to these individuals based on work and life experience which exempted them from some of the coursework the board considered necessary. The amended administrative regulation will prohibit counting such credits toward certification requirements.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) comply with the drafting and format requirements of KRS Chapter 13A; and (2) clarify that credit granted by postsecondary institutions for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2:140. Probationary certificate for teachers of children, birth to primary.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2:150. Probationary certificate for teachers of technology education.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2:160. Probationary certificate for teachers of exceptional children.

A motion was made and seconded to approve the following amendment. to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

16 KAR 2:170. Probationary certificate for middle school teachers.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements in KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Administrative Certificates

16 KAR 3:080. Career and technical education.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and 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.

Educator Preparation

16 KAR 5:040. Admission, placement, and supervision in student teaching.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 4, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Internship

16 KAR 7:010 & E. Kentucky Teacher Internship Program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 5, 6, 7, 8, 9, 11, and 12

to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 4 to specify if a waiver is granted, it shall remain in effect for the duration of the internship, rather than for the calendar year during which it was granted. Without objection, and with agreement of the agency, the amendments were approved.

Alternative Routes to Certification

16 KAR 9 040. Part-time adjunct instructor certificate.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Ad Valorem Tax; State Assessment

103 KAR 8:110. Apportioned Vehicles. Eddie Mattingly, legislative liaison, and Angela Robinson, attorney, represented the department.

In response to questions by Representative Lee, Mr. Mattingly stated that the method for computing depreciation values was not changed by this administrative regulation. The depreciation values were published by a nationally recognized, reputable company that had served as a long-term source for the department. The publication was available for a fee. Subcommittee staff stated that the extensive document was incorporated by reference in the administrative regulation and that it was available for inspection at the department or at LRC.

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 1 to specify the name of the publication (the "Marshall Valuation Service") that has been designated as the authoritative source of depreciation values for determining the annual fee on apportioned motor vehicles; and (3) to create a new Section 2 to incorporate by reference the named publication. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Property

200 KAR 6 046E. Repeal of 200 KAR 6:045.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:150. Dental application; examination. Mark Brengelman, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) specify the name of the required application form; (b) clarify the examination requirements, and (c) require a passport-sized photograph be attached to the application form; (2) to amend Section 2 to change the edition date of the material incorporated by reference; and (3) to amend the incorporated application form to comply with the drafting requirements of KRS Chapter 13A and this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:260. Dental hygiene application; examination.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) specify the name of the required application form; (b) clarify the examination requirements; and (c) require a passport-sized photograph be attached to the application form; (2) to amend Section 2 to change the edition date of the material incorporated by reference; and (3) to amend the incorporated application form to comply with the drafting requirements of KRS Chapter 13A and the provisions of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Licensure: Board

201 KAR 9:041. Fee schedule. Danny Clark, M.D., president; Michael Rodman, assistant executive director; and Lloyd Vest, general counsel, represented the board.

Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:170. Compensation of board members. David Cox, executive director, and Jonathan Doran Buckley, general counsel, represented the board

201 KAR 18:192. Continuing professional development.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, 3, 5, 6, 7 and 9 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20.070. Licensure by examination. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 4 to delete language that is no longer needed. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to delete language that is no longer needed; and (2) to correct a minor drafting error. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:161. Investigation and disposition of complaints.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to delete disciplinary actions not listed; and (2) to correct a minor drafting error. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20.310. Faculty for prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 4 to delete language that is no longer needed; (2) to correct a minor drafting error; (3) to delete language in Section 2 that is ambiguous; and (4) to amend Sections 1 to 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

201 KAR 20:450. Alternative program.

201 KAR 20.470. Dialysis technician credentialing requirements and training program standards.

201 KAR 20:500. Nurse licensure compact.

In response to questions by Senator Tapp, Mr. Goldman stated there were 20 states in the Nurse Licensure Compact, to date, with Tennessee being the closest state.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant. Becky Klusch, executive director, and Mark Brengelman, assistant attorney general, represented the board.

In response to questions by Co-chair Pullin, Ms. Klusch stated there was currently a shortage of physical therapists in all settings

but that it was cyclical. A few years ago there were too many. Physical therapy assistants worked under the supervision of a physical therapist and followed the prescribed plan of care. There were three schools that train physical therapists and five schools that train physical therapy assistants in Kentucky.

Co-chair Pullin stated that there was a shortage of engineers, physical therapists, and nurses in Kentucky, while there were still Kentuckians who need jobs. She stated this was a challenge for the General Assembly and the agencies to find ways to provide training opportunities for Kentucky citizens to assist them in obtaining employment and address the shortage of qualified personnel in those fields.

201 KAR 22.140. Funding of impaired physical therapy practitioners committee

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendment was approved.

Board of Licensure and Certification for Dietitians and Nutritionists: Board

201 KAR 33.030. Continuing education requirements for licensees and certificate holders. Cheryl Bentley, licensed dietician and board chair, and Claude Wagner, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

COMMERCE CABINET: Kentucky Department of Fish and Wildlife Resources: Game

301 KAR 2 083. Holding and intrastate transportation of captive cervids. Jon Gassett, commissioner; Jim Lane, wildlife division director; and Morgain Sprague, attorney, represented the department

A motion was made and seconded to approve the following amendments: to amend Section 8 to (1) delete language that repeated or modified statutory provisions; (2) include a reference to the authorizing statute, and (3) correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:022. License, tag and permit fees.

In response to questions by Representative Lee, Mr. Gassett stated the department did not currently have the authority to set fee increases based on the consumer price index but the department may seek to introduce legislation on that topic in the future

In response to questions by Co-chair Pullin, Mr. Gassett stated that discounted hunting and fishing licenses for seniors were for individuals age 65 and over. The department could consider lowering the age but it may not be financially feasible. If the department did not raise its fees, it would have to make cuts in its private pond fish stocking program and possibly its landowner assistance program. It had already increased camp fees and magazine subscription costs. Kentucky's deer herds and turkey flocks were among the best in the country and justified higher fees. Many other states charged higher fees to nonresidents than Kentucky does so increases in nonresident fees would even things out. All of the members of the department's board have supported the fee increases.

In response to questions by Representative Reinhardt, Mr. Gassett stated that Kentucky was overstocked with deer but not with turkeys. Northern and western Kentucky have too many deer which they were trying to reduce through doe management. A new "hunters for the hungry" program created during the last session of the General Assembly will allow hunters to kill does to donate them to the poor for food. There were nine members on the department's board. Of those, five were selected by sportsmen and appointed by the governor. Disabled persons of any age were eligible for the $5.00 license. The permit for $5.00 covered everything except the fee to apply for a deer or elk hunt.

In response to questions by Senator Tapp, Mr. Gassett stated that the fee increases were intended to generate additional income as well as simplify the overall fee structure and reduce the number of different rates and permits. The department tried to eliminate the 15-day nonresident fishing license and reduce the seven-day permit to a five-day to be consistent with hunting licenses but, after a public hearing, they did not do that

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph to correct statutory citations. Without objection, and with agreement of the agency, the amendment was approved. Co-chair Pullin stated that she wanted her objection to this administrative regulation noted in the record.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Division of Show and Fair Promotion: Fairs and Shows

302 KAR 15:010. Administration, state aid to local fairs. Mark Farrow, chief of staff; and

Stewart Gritton, county fairs coordinator represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (2) to amend Section 1(3) to clarify the approval process for fair events conducted on separate dates; (3) to amend Section 1(4) to delete outdated language related to classes; (4) to amend Section 2 to clarify deadline dates for turning in documentation; (5) to amend Section 7 to clarify the application process for the Building Program; (6) to amend Section 8 to differentiate between the Building Program and the Grant Program and clarify the application process for the Grant Program; (7) to amend Section 10 to correctly reference the materials incorporated by reference; and (8) to amend Sections 1 through 9 to clarify indefinite provisions and further 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 Regulation and Inspection: Amusement Rides

302 KAR 16:010. Permit for operation of amusement rides or amusement attractions in Kentucky. Mark Farrow, chief of staff; Chad Halsey, administrative branch manager; and Gary Wheeler, supervisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete the definitions for terms not used in this administrative regulation, as required by KRS 13A.222(4), and (2) to amend Sections 1, 3, 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.

302 KAR 16 020. Operation of amusement rides or amusement attractions.

In response to questions from Representative Reinhardt, Mr. Farrow stated that in 2005 there were three reported accidents, and one reported in 2006 to date. Since 1986 there have been zero rider deaths and one death of an amusement ride worker in Kentucky. In 2006 the department performed initial inspections on at least 2,305 rides and follow-up inspections on at least 3,000. This administrative regulation adds hay rides to the list of attractions that were not inspected.

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 1 to add definitions for the terms used in this administrative regulation; (3) to amend Section 2 to specify that amusement attractions shall not include hay rides, haunted houses, mazes, manual belayed climbing walls, and mechanical bulls; (4) to amend Section 3 to: (a) delete the $75 inspection fee for mechanical bulls; (b) establish a $75 inspection fee for dark rides; and (c) reduce the fee for amusement rides or attractions not specifically listed in this administrative regulation to $150 (from $200); and (5) to amend Sections 1 to 9 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 Regulation and Inspection: Weights and Measures

302 KAR 85.010. Requirements to establish fee schedules for calibrations, adjustments, weights and measures. Mark Farrow, chief of staff, and Jason Glass represented the department. John Mann, owner, Jack Mann Scales, appeared in support of this administrative regulation.

John Mann stated that the industry wanted the reliability that came with certified calibration which required an up-to-date state laboratory and he supported this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Section 1(2) to correct a drafting error. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division for Air Quality: General Administrative Procedures

401 KAR 50.010. Definitions for 401 KAR Chapter 50. Lona Brewer, program manager, and Chris Hall, program planning, represented the department.

In response to a question by Representative Reinhardt, Ms. Brewer stated that individuals could report suspected illegal burning by calling 1-800-BURN-LAW or by calling the Division for Air Quality at 502-573-3382.

Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

Permits, Registrations, and Prohibitory Rules

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

New Source Standards

401 KAR 59:001. Definitions for 401 KAR Chapter 59.

Existing Source Standards

401 KAR 61:001. Definitions for 401 KAR Chapter 61.

General Standards of Performance

401 KAR 63:001. Definitions for 401 KAR Chapter 63.

Mobile Source-Related Emissions

401 KAR 65:001. Definitions for 401 KAR Chapter 65.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:240 & E. Home incarceration using an approved monitoring device. Amy Barker, assistant general counsel, and John Dunn, executive staff advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to change the edition date of the material incorporated by reference; and (2) to amend CPP Policy 25.12 to comply with the drafting requirements of KRS Chapter 13A and to correct typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Office of Budget and Fiscal Management: Property Acquisition and Uniform Relocation

600 KAR 3:030. Relocation or reconstruction of utility and rail facilities; record keeping and audit requirements. Dana Fugazzi, staff attorney; Jess Zimmerman, audit review specialist; Michael Coffey, audit supervisor; and Jim Wathen, director, represented the agency.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Highways: Division of Program Performance: Professional Engineering and Related Services

600 KAR 6:010. Definitions of terms used in 600 KAR Chapter 6.

In response to questions by Representative Bruce, Mr. Wathen stated the department has about 432 engineers and they performed some of the necessary engineering in-house.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct statutory citations; and (3) to amend Section 1 to define (and use) the statutorily-required terms "engineer" and "engineering-related services" rather than "professional engineer" and "professional engineering and related services". Without objection, and with agreement of the agency, the amendments were approved.

600 KAR 6:030. Federal requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (3) 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. Without objection, and with agreement of the agency, the amendments were approved.

600 KAR 6:040. Prequalification of firms for professional engineering or related services. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1-6 and 8 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (3) to amend Section 3 to clearly establish the requirements for prequalification, including specifying the contents of the overhead package that is required to be submitted; and (4) to amend Section 8 to incorporate by reference the items included in the overhead package. Without objection, and with agreement of the agency, the amendments were approved.

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and 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.

600 KAR 6:060. Professional Engineering Service Selection Committee.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and 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.

600 KAR 6:065. Pooling of professional engineering or related services.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1, 2, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

600 KAR 6:070. Contracting for professional engineering or related services.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 to 4, 7, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 9 to specify that the department shall not be required to pay the demobilization fee (for early cancellation) if the contract is terminated due to criminal, fraudulent, or negligent behavior. Without objection, and with agreement of the agency, the amendments were approved.

600 KAR 6:080. Financial records and audits of firms.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Board of Education: Department of Education: Pupil Transportation

702 KAR 5:010. Pupil transportation: technical assistance and monitoring. Kevin Noland, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:100. Appeal procedures for nutrition and health services programs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 4 to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Department for Libraries and Archives: Field Services Division: Libraries

725 KAR 2:015. Services and facilities for public libraries. Jim Nelson, state librarian, and Chris Bischoff, state library construction consultant, represented the department.

In response to a question by Representative Bruce, Mr. Nelson stated that the libraries were independent and had their own local boards appointed through the fiscal court.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify the subject matter of the administrative regulation; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (4) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A; (5) to amend Section 1 to add a definition of responsible bidder; (6) to amend Section 2 to correct a citation to the state Standards of Safety and to provide information about how to obtain forms from the American Institute of Architects; (7) to amend Section 3 to require an applicant to complete a Notification of Intent to Apply and to clarify when a late application will be considered; (8) to amend Section 4 to clearly state the criteria for an award of funds; (9) to amend Section 6 to clarify when a local board will be given an extension of time to determine whether to accept an award; (10) to amend Section 8 to clearly state the records retention schedule a grantee must follow; and (11) to amend Section 10 to incorporate by reference the required forms and retention schedule. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Division of Health Insurance Policy and Managed Care: Health Insurance Contracts

806 KAR 17:021. Repeal of 806 KAR 17:110, 806 KAR 17:120, and 806 KAR 17:205. D.J. Wasson, acting deputy executive director, represented the department.

806 KAR 17:180 & E. Standard health and benefit plan.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2 to require the filing prior to July 1 rather than within a reasonable time period after May 1. Without objection, and with agreement of the agency, the amendments were approved.

Group and Blanket Health Insurance

806 KAR 18:061. Repeal of 806 KAR 18:060.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services

907 KAR 1:170 & E. Reimbursement for home and community based waiver services. Angela Kirkland, director, and Rob Edwards, legislative director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 9, and 10 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 1:450. Nurse aide training criteria and registry.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 6 to correct statutory citations; (2) to amend Sections 2, 3, 5, 6, 7, and 11 to comply with drafting and format requirements of KRS Chapter 13A; (2) to amend Section 2 to comply with the federal regulation; (3) to amend Section 3 to specify that one year of experience in long-term care services (rather than in a long-term care facility) is required; and (4) to amend Section 7 to clarify the procedures for administering an examination. Without objection, and with agreement of the agency, the amendments were approved.

Department for Human Support Services: Division of Aging Services: Aging Services

910 KAR 1:260. Kentucky Family Caregiver Program. Bill Cooper, Shirley Eldridge, and Mamie Mountjoy represented the department.

Representative Lee stated that he had worked with the department on this issue for six years, sponsored the enabling legislation, and was glad to see the implementation of this program through the promulgation of this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend Section 2 to clarify a grandparent's eligibility requirements; (3) to amend Section 4 to clarify the reporting requirements for a participating district; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, and 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.

Department for Community Based Services: Division of Policy Development

921 KAR 3:042. Food Stamp Employment and Training Program. Elizabeth Caywood represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 2, 3, 4, 7, 8, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Kentucky Horse Racing Authority: Thoroughbred Racing

810 KAR 1:080. International wagering hubs.

Harness Racing

811 KAR 1:010. Associations.
811 KAR 1:015. Race officials.
811 KAR 1:020. Registration and identification of horses.
811 KAR 1:025. Farm or stable name.
811 KAR 1:030. Eligibility and classification.
811 KAR 1:035. Claiming races
811 KAR 1:040. Stakes and futurities.
811 KAR 1:045. Entries.
811 KAR 1:050. Entries and starters; split races.
811 KAR 1:055. Declaration to start, drawing horses.
811 KAR 1:060. Postponement; rescheduling, purses.
811 KAR 1:065. Starting.
811 KAR 1:075. Racing and track rules.
811 KAR 1:080. Placing; money distribution.
811 KAR 1:085. Conduct of racing.
811 KAR 1:100. Protests.
811 KAR 1:105. Review and appeal.
811 KAR 1:110. Timing and records.
811 KAR 1:130. Security; persons permitted on licensed premises.
811 KAR 1:135. Identification cards and badges.
811 KAR 1:140. Post time; entry number.
811 KAR 1:145. Number of races per program.
811 KAR 1:155. Postponements; decision on.
811 KAR 1:160. Association with undesirables prohibited.
811 KAR 1:171. Repeal of 811 KAR 1:165, 1:170, 1:180 and 1:190.
811 KAR 1:175. Tack inspection.
811 KAR 1:195. Track deductions from wagers.
811 KAR 1:215. Kentucky Standardbred Development Fund.
811 KAR 1:225. Substance abuse by Authority employees and licensees.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Day Care

922 KAR 2:170 & E. STARS for KIDS NOW Program for Type I licensed child care centers.

The subcommittee adjourned at 11:35 a.m. until November 14, 2006 at 10 a.m. in room 125 Capitol Annex.

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 October 11, 2006

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 October 11, 2006, having been referred to the Committee on October 4, 2006, pursuant to KRS 13A.290(6):

301 KAR 1:031
301 KAR 1:032
301 KAR 1:140
301 KAR 2:075
301 KAR 2:251
301 KAR 5:050
921 KAR 4:118 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300.

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 11, 2006 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS
Meeting of October 13, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing and Occupations for its meeting of October 13, 2006, having been referred to the Committee on October 4, 2006, pursuant to KRS 13A.290(6):

902 KAR 20 074

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 13, 2006 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
October 18, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 18, 2006, having been referred to the Committee on October 4, 2006, pursuant to KRS 13A.290(6):

201 KAR 20:056
201 KAR 20:057
201 KAR 21:015
201 KAR 21:025
201 KAR 21:051
201 KAR 21:055
201 KAR 21:085
201 KAR 21:100
902 KAR 20.390
908 KAR 3:050
921 KAR 1:380
921 KAR 1:390
921 KAR 1:400

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 18, 2006 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **E - 2**

The Locator Index lists all administrative regulations published in VOLUME 32 of the Administrative Register from July, 2005 through June, 2006. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally 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.

KRS Index **E - 15**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 32 of the Administrative Register.

Subject Index **E - 23**

The Subject Index is a general index of administrative regulations published in VOLUME 32 of the Administrative Register, and is mainly broken down by agency.

Regulation Number	32 Ky.R. Page No.	Effective Date

VOLUME 32

The administrative regulations listed under VOLUME 32 are those administrative regulations that were originally published in Volume 32 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2006 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: 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.)

31 KAR 4:150E	866	10-13-05
Expired		8-9-06
31 KAR 4:160E		
Resubmitted	1975	4-14-06
Replaced		(See 33 Ky.R.)
31 KAR 4:170E	1977	4-14-06
Replaced	2200	726-06
31 KAR 5 030E	2224	5-2-06
Replaced	375	9-1-06
103 KAR 1:040E	1512	2-10-06
103 KAR 1:050E	1514	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 15 020E	1547	2-1-06
Expired		8-31-06
103 KAR 15:100E	1548	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 15:140E	1549	2-1-06
Expired		7-31-06
103 KAR 16:020E	1551	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16.060E	1552	2-1-06
Replaced		(See 33 Ky.R.)
103 KAR 16:090E	1555	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16:150E	1978	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 16.200E	1556	2-3-06
Expired		8-2-06
103 KAR 16:210E	1559	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16:220E	1560	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16:230E	1561	2-10-06
Replaced		(See 33 Ky R)
103 KAR 16:240E	1563	2-1-06
Replaced		(See 33 Ky.R.)
103 KAR 16:250E	1566	2-10-06
Replaced		(See 33 Ky R.)
103 KAR 16 270E	1568	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16.290E	1570	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16.300E	1571	2-10-06
Replaced		(See 33 Ky.R.)
103 KAR 16:310E	1979	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 16:320E	1981	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 16:330E	1982	4-6-06
Replaced		(See 33 Ky.R)
103 KAR 16:340E	1982	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 17:060E	1984	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 17:100E	1985	4-6-06
Replaced		(See 33 Ky.R.)
103 KAR 18.070E	1572	2-1-06
Expired		7-31-06
103 KAR 18 160E	1574	2-3-06
Expired		8-2-06
201 KAR 11:011E		
Resubmitted	1576	2-6-06
201 KAR 11:121E		
Resubmitted	1577	2-6-06
201 KAR 41.060E	2225	5-15-06
502 KAR 32.010E	1579	1-23-06
Replaced	2007	6-2-06
503 KAR 3.050E	1367	1-12-06
Replaced	2268	7-7-06
503 KAR 3:070E	1986	3-17-06
Replaced		(See 33 Ky.R.)
505 KAR 1:101E	1988	3-21-06
Withdrawn		7-21-06
810 KAR 1:070E	1370	12-29-05
Replaced	2269	7-7-06
815 KAR 6:010E	2226	5-9-06
815 KAR 6:040E	2229	5-9-06
900 KAR 5:020E		
Resubmitted	1582	1-31-06
Replaced	2295	7-24-06
900 KAR 6.020E	1583	1-31-06
Replaced	1786	6-2-06
900 KAR 6.050E	1584	1-31-06
902 KAR 4.030E		
Resubmitted	1376	12-20-05
Replaced	2274	7-7-06
902 KAR 20:074E	2231	5-12-06
907 KAR 1:019E	1869	2-28-06
907 KAR 1:145E	1989	4-4-06
907 KAR 1:155E	2002	4-4-06
907 KAR 1:715E	1598	1-20-06
Replaced	2277	7-7-06
907 KAR 3:170E	1874	2-28-06
Replaced	2279	7-7-06
907 KAR 3:180E	2237	5-4-06
Withdrawn		6-30-06
908 KAR 3:190E	1212	12-9-05
921 KAR 4 116E	1601	2-1-06
Replaced	2019	6-2-06

ORDINARY ADMINISTRATIVE REGULATIONS:

16 KAR 1:050		(See 33 Ky.R.)
Amended	2044	
16 KAR 2.060		(See 33 Ky.R.)
Amended	2045	
16 KAR 5 010		(See 33 Ky R.)
Amended	2047	
16 KAR 6.030		(See 33 Ky.R.)
Amended	2055	
31 KAR 4.040		
Amended	2310	(See 33 Ky.R.)
31 KAR 4:160		(See 33 Ky.R.)
Amended	2056	
31 KAR 4:170	2200	7-26-06
31 KAR 5:030	2387	(See 33 Ky.R.)
103 KAR 1:040	1810	(See 33 Ky.R.)
103 KAR 1:050		(See 33 Ky.R)
Amended	1687	8-7-06
103 KAR 15:020	1815	
Amended	2283	(See 33 Ky.R)
103 KAR 15:100	1816	(See 33 Ky.R.)
103 KAR 15 140	1817	(See 33 Ky.R.)
103 KAR 16:020	1819	(See 33 Ky R.)

Regulation Number	32 Ky.R. Page No.	Effective Date
103 KAR 16.060	1716	
Amended	2284	(See 33 Ky.R.)
103 KAR 16:090	1819	
Amended	2287	(See 33 Ky R.)
103 KAR 16:150		
Amended	2059	(See 33 Ky.R.)
103 KAR 16:200	1720	(See 33 Ky.R.)
103 KAR 16:210	1821	(See 33 Ky.R.)
103 KAR 16:220	1821	
Amended	2288	(See 33 Ky.R.)
103 KAR 16.230	1823	(See 33 Ky.R.)
Amended	2289	
103 KAR 16:240	1824	(See 33 Ky.R.)
103 KAR 16 250	1827	(See 33 Ky R.)
103 KAR 16:270	1830	
Amended	2290	(See 33 Ky.R.)
103 KAR 16:290	1831	(See 33 Ky.R.)
103 KAR 16:300	1832	
Amended	2292	(See 33 Ky.R.)
103 KAR 16:310	2201	(See 33 Ky.R)
103 KAR 16:320	2202	(See 33 Ky.R.)
103 KAR 16:330	2203	(See 33 Ky.R.)
103 KAR 16:340	2204	(See 33 Ky.R.)
103 KAR 17:060		
Amended	2060	(See 33 Ky.R.)
103 KAR 17.100	2205	(See 33 Ky.R.)
103 KAR 18 070	1723	(See 33 Ky.R)
103 KAR 18:160	1833	(See 33 Ky.R.)
200 KAR 15:010		
Amended	1460	
Amended	1904	6-2-06
200 KAR 17:050		
Amended	1319	
Amended	1906	
As Amended	2239	7-7-06
200 KAR 17 070		
Amended	1323	
Amended	1910	
As Amended	2242	7-7-06
201 KAR 1:015		
Amended	2061	(See 33 Ky.R)
201 KAR 1:050		
Amended	2062	(See 33 Ky.R.)
201 KAR 1:190		
Amended	2063	9-1-06
201 KAR 11 011		
Amended	1724	(See 33 Ky R.)
201 KAR 11:105		
Amended	2311	
201 KAR 11.121		
Amended	1725	
201 KAR 11:220		
Amended	2312	(See 33 Ky.R)
201 KAR 11:250		
Amended	2314	(See 33 Ky.R)
201 KAR 11:350		
Amended	2315	(See 33 Ky.R)
201 KAR 11:400		
Amended	2318	(See 33 Ky.R.)
201 KAR 11:430		
Amended	2320	(See 33 Ky.R.)
201 KAR 12:020		
Amended	2066	(See 33 Ky.R.)
201 KAR 20:070		
Amended	1917	6-21-06
201 KAR 20:110		
Amended	1918	6-21-06
201 KAR 20:215		
Amended	2322	9-1-06
201 KAR 20:370		
Amended	2069	7-24-07
201 KAR 20:411		
Amended	1921	
201 KAR 20 490		
Amended	2324	(See 33 Ky.R.)
201 KAR 21:015		
Amended	1727	(See 33 Ky.R.)
201 KAR 21:025		
Amended	1728	(See 33 Ky R.)
201 KAR 21:031		
Amended	1730	
Withdrawn		7-19-06
201 KAR 21 041		
Amended	1731	
Withdrawn		8-7-06
201 KAR 21:045		
Amended	1732	
Withdrawn		8-7-06
201 KAR 21:051		
Amended	1734	(See 33 Ky.R.)
201 KAR 21:055		
Amended	1736	(See 33 Ky.R.)
201 KAR 21:060		
Amended	1737	
Withdrawn		8-7-06
201 KAR 21:065		
Amended	1738	
Withdrawn		7-25-06
201 KAR 21:070		
Amended	1739	
Withdrawn		8-7-06
201 KAR 21:075		
Amended	1740	
Withdrawn		8-7-06
201 KAR 21 080		
Amended	1741	
Withdrawn		7-25-06
201 KAR 21:085		
Amended	1743	(See 33 Ky.R.)
201 KAR 21:095		
Amended	1744	
Withdrawn		8-7-06
201 KAR 21:100		
Amended	1745	(See 33 Ky.R.)
201 KAR 22 045		
Amended	2069	(See 33 Ky R.)
201 KAR 22:070		
Amended	2070	
Withdrawn		6-19-06
201 KAR 25:031		
Amended	2072	(See 33 Ky.R)
201 KAR 27:005		
Amended	1746	
As Amended	2247	7-7-06
201 KAR 27:007		
Amended	1748	
As Amended	2248	7-7-06
201 KAR 27.008		
Amended	1749	
As Amended	2249	7-7-06
201 KAR 27:010		
Repealed	1847	7-7-06
201 KAR 27.011	1835	
As Amended	2249	7-7-06
201 KAR 27.012		
Amended	1750	
As Amended	2254	7-7-06
201 KAR 27:013		
Repealed	1847	7-7-06
201 KAR 27 014		
Repealed	1847	7-7-06
201 KAR 27:015		
Repealed	1847	7-7-06
201 KAR 27.016	1840	

Regulation Number	32 Ky.R. Page No.	Effective Date
Amended	2023	
As Amended	2255	7-7-06
201 KAR 27:017	1844	
As Amended	2259	7-7-06
201 KAR 27:020		
Amended	1752	
As Amended	2261	7-7-06
201 KAR 27.030		
Repealed	1847	7-7-06
201 KAR 27:031 *(r)*	1847	7-7-06
201 KAR 27:035		
Amended	1754	
As Amended	2262	7-7-06
201 KAR 27.040		
Amended	1755	
As Amended	2262	7-7-06
201 KAR 27:045		
Amended	1756	
As Amended	2263	7-7-06
201 KAR 27:050		
Amended	1757	
As Amended	2264	7-7-06
201 KAR 27 055		
Amended	1759	
As Amended	2264	7-7-06
201 KAR 27.060		
Amended	1760	
As Amended	2265	7-7-06
201 KAR 27:065	1847	
As Amended	2266	7-7-06
201 KAR 27:070		
Amended	1762	
As Amended	2266	7-7-06
201 KAR 27:090	1849	
As Amended	2267	7-7-06
201 KAR 29.010		
Amended	2326	9-1-06
201 KAR 29 015		
Amended	2327	(See 33 Ky R)
201 KAR 29.050		
Amended	2328	9-1-06
201 KAR 30 040		
Amended	2330	9-1-06
201 KAR 36 030		
Amended	2074	(See 33 Ky R.)
201 KAR 36.040		
Amended	2076	(See 33 Ky.R.)
201 KAR 36:070		
Amended	2078	(See 33 Ky.R.)
201 KAR 39:050		
Amended	2331	(See 33 Ky.R.)
201 KAR 39:070		
Amended	2333	(See 33 Ky.R.)
201 KAR 39:090		
Amended	2335	(See 33 Ky.R.)
201 KAR 41:020	2388	
201 KAR 41:040		
Amended	2337	
Withdrawn		8-7-06
201 KAR 41:060	2389	(See 33 Ky.R.)
201 KAR 41.070	2390	(See 33 Ky R)
201 KAR 41 080	2393	(See 33 Ky.R)
201 KAR 41.090	2394	(See 33 Ky R)
301 KAR 1:015		
Amended	2079	(See 33 Ky R.)
301 KAR 1.085		
Amended	2081	(See 33 Ky R.)
301 KAR 1:110		
Amended	2083	(See 33 Ky.R.)
301 KAR 1 115		
Amended	2084	(See 33 Ky.R.)
301 KAR 1.122		
Amended	2086	(See 33 Ky R.)
301 KAR 1.150		
Amended	2087	(See 33 Ky.R.)
301 KAR 1 201		
Amended	2088	(See 33 Ky.R.)
301 KAR 2.041		
Amended	1763	
As Amended	2005	6-2-06
301 KAR 2:050		
Amended	2092	7-12-06
301 KAR 2:111		
Amended	2094	7-12-06
301 KAR 2:132		
Amended	2095	(See 33 Ky.R.)
301 KAR 2:142		
Amended	1923	7-7-06
301 KAR 2:174		
Amended	2099	7-12-06
301 KAR 2:176		
Amended	2100	(See 33 Ky R.)
301 KAR 2:178		
Amended	2101	(See 33 Ky.R.)
301 KAR 2:179		
Amended	2106	7-12-06
301 KAR 2:251		
Amended	1765	6-2-06
301 KAR 3.022		
Amended	2108	
Withdrawn		6-12-06
301 KAR 4:050		
Amended	1924	7-7-06
304 KAR 1:040		
Amended	1925	
As Amended	2267	7-7-06
401 KAR 42 005		
Amended	2109	(See 33 Ky.R)
401 KAR 42 011		
Amended	2113	(See 33 Ky.R)
401 KAR 42.020		
Amended	2115	(See 33 Ky.R.)
401 KAR 42:030		
Amended	2117	(See 33 Ky R)
401 KAR 42:040		
Amended	2118	(See 33 Ky R)
401 KAR 42:050		
Amended	2120	(See 33 Ky R)
401 KAR 42:060		
Amended	2121	(See 33 Ky R.)
401 KAR 42:070		
Amended	2123	(See 33 Ky.R.)
401 KAR 42:072	2206	
401 KAR 42:080		
Amended	2125	(See 33 Ky R.)
401 KAR 42:090		
Amended	2127	(See 33 Ky.R.)
401 KAR 42 200		
Amended	2128	(See 33 Ky.R.)
401 KAR 42:250	2207	(See 33 Ky R.)
401 KAR 42 290		
Amended	2130	(See 33 Ky.R.)
401 KAR 42 300		
Amended	2134	(See 33 Ky.R.)
401 KAR 42:314		
Amended	2136	(See 33 Ky.R.)
401 KAR 42:316		
Amended	2139	(See 33 Ky.R)
401 KAR 42:330		
Amended	2141	(See 33 Ky.R)
401 KAR 42:335		
Amended	2143	(See 33 Ky.R)
401 KAR 42:340		
Amended	2145	

Regulation Number	32 Ky.R. Page No.	Effective Date
415 KAR 1:051	2212	(See 33 Ky.R.)
501 KAR 6:020		
Amended	1767	
As Amended	2006	6-2-06
Withdrawn		10-17-06
501 KAR 6.060		
Amended	2338	(See 33 Ky.R.)
501 KAR 6:190		
Amended	2147	(See 33 Ky.R.)
501 KAR 12:001 *(r)*	2396	9-1-06
501 KAR 12 010		
Repealed	2396	9-1-06
501 KAR 12:020		
Repealed	2396	9-1-06
501 KAR 12:030		
Repealed	2396	9-1-06
501 KAR 12:040		
Repealed	2396	9-1-06
501 KAR 12:050		
Repealed	2396	9-1-06
501 KAR 12:060		
Repealed	2396	9-1-06
501 KAR 12:070		
Repealed	2396	9-1-06
501 KAR 12:080		
Repealed	2396	9-1-06
501 KAR 12:090		
Repealed	2396	9-1-06
501 KAR 12:100		
Repealed	2396	9-1-06
501 KAR 12:110		
Repealed	2396	9-1-06
501 KAR 12:120		
Repealed	2396	9-1-06
501 KAR 12:130		
Repealed	2396	9-1-06
501 KAR 12:140		
Repealed	2396	9-1-06
501 KAR 12:150		
Repealed	2396	9-1-06
502 KAR 32:010	1851	
As Amended	2007	6-2-06
503 KAR 3:050		
Amended	1476	
As Amended	2268	7-7-06
503 KAR 3.070		
Amended	2149	(See 33 Ky.R.)
505 KAR 1:100		
Amended	1478	
Amended	2027	7-7-06
505 KAR 1:130		
Amended	1335	
Amended	1915	
As Amended	2009	6-2-06
702 KAR 7:065		
Amended	1769	6-2-06
702 KAR 7:125		
Amended	1771	
As Amended	2009	6-2-06
703 KAR 5.010		
Amended	2151	8-7-06
703 KAR 5:140		
Amended	1775	6-2-06
704 KAR 3:303		
Amended	2153	(See 33 Ky.R.)
704 KAR 3:305		
Amended	1779	
Amended	2028	(See 33 Ky.R.)
704 KAR 3 490		
Amended	2154	(See 33 Ky.R.)
704 KAR 3:530	2213	(See 33 Ky.R.)
803 KAR 2:180		
Amended	1338	(See 33 Ky.R.)
803 KAR 25.010		
Amended	2340	
Withdrawn		6-9-06
803 KAR 25:021		
Amended	2349	(See 33 Ky.R.)
806 KAR 2:080		
Repealed	2397	9-1-06
806 KAR 2 081 *(r)*	2397	9-1-06
806 KAR 3:100		
Repealed	2398	9-1-06
806 KAR 3:101 *(r)*	2398	9-1-06
806 KAR 6.030		
Repealed	2398	9-1-06
806 KAR 6:040		
Repealed	2398	9-1-06
806 KAR 6:050		
Repealed	2398	9-1-06
806 KAR 6 031 *(r)*	2398	9-1-06
806 KAR 7:050		
Repealed	2399	9-1-06
806 KAR 7:051 *(r)*	2399	
806 KAR 7:060		
Repealed	2399	9-1-06
806 KAR 7:070		
Repealed	2399	9-1-06
806 KAR 7:080		
Repealed	2399	9-1-06
806 KAR 9:310		
Amended	323	
Amended	909	
As Amended	2013	6-2-06
806 KAR 17:160		
Amended	1781	6-2-06
806 KAR 17:330		
Amended	1782	
As Amended	2015	6-2-06
808 KAR 1:050		
Amended	2156	(See 33 Ky.R.)
808 KAR 10.010		
Amended	1784	
As Amended	2015	6-2-06
808 KAR 10:200		
Amended	1482	
As Amended	2017	6-2-06
810 KAR 1:070	1501	
Amended	2030	
As Amended	2269	7-7-06
810 KAR 1.080	1854	
Amended	2292	
815 KAR 6:010	2400	(See 33 Ky.R.)
815 KAR 6 020	2402	(See 33 Ky.R.)
815 KAR 6.030	2403	(See 33 Ky.R.)
815 KAR 6.040	2405	(See 33 Ky.R.)
815 KAR 10:060		
Amended	2352	(See 33 Ky.R.)
815 KAR 20.020		
Amended	2357	(See 33 Ky.R.)
815 KAR 20 030		
Amended	2361	(See 33 Ky.R.)
815 KAR 20:050		
Amended	2362	(See 33 Ky.R.)
815 KAR 20.055		
Amended	2364	(See 33 Ky.R.)
815 KAR 20:070		
Amended	2365	(See 33 Ky.R.)
815 KAR 20 090		
Amended	2367	(See 33 Ky.R.)
815 KAR 20:120		
Amended	2371	(See 33 Ky.R.)
815 KAR 35 060		
Amended	2377	(See 33 Ky R.)

Regulation Number	32 Ky.R. Page No.	Effective Date
900 KAR 5:020		
Amended	1785	
Amended	2295	7-24-06
900 KAR 6:020		
Amended	1786	6-2-06
900 KAR 6:050		
Amended	1788	
Amended	2296	(See 33 Ky.R.)
902 KAR 4:030		
Amended	2036	
Amended	1487	
As Amended	2274	6-21-06
902 KAR 20.074	2407	(sse 33 Ky.R)
902 KAR 20.091		
Amended	2157	(See 33 Ky.R.)
902 KAR 55:110		
Amended	1927	(See 33 Ky.R.)
906 KAR 1:100		
Amended	2380	(See 33 Ky.R.)
906 KAR 1:110		
Amended	2161	(See 33 Ky.R.)
907 KAR 1:019		
Amended	1929	(See 33 Ky.R.)
907 KAR 1:022		
Amended	2164	8-7-06
907 KAR 1:044		
Amended	1801	
Amended	2039	
As Amended	2276	7-7-06
907 KAR 1:145		
Amended	2169	(See 33 Ky R)
907 KAR 1:155		
Amended	2181	(See 33 Ky R)
907 KAR 1:715		
Amended	1803	
Amended	2041	
As Amended	2277	7-7-06
907 KAR 3:170		
Amended	1934	
As Amended	2279	7-7-06
908 KAR 3:060		
Amended	2184	(See 33 Ky.R.)
908 KAR 3:190	1352	
921 KAR 2:055		
Amended	1937	(See 33 Ky.R.)
921 KAR 3:050		
Amended	1943	(See 33 Ky R.)
921 KAR 3:060		
Amended	2186	(See 33 Ky.R.)
921 KAR 3:070		
Amended	1948	(See 32 Ky.R.)
921 KAR 4:116		
Amended	1806	
As Amended	2019	6-2-06
922 KAR 1:350		
Amended	1953	(See 33 Ky.R.)
922 KAR 2:160		
Amended	2191	(See 33 Ky.R.)
922 KAR 2:180		
Amended	2383	(See 33 Ky.R.)
922 KAR 2:240	1963	(See 33 Ky.R.)

Regulation Number	33 Ky.R. Page No.	Effective Date

VOLUME 33

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: 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.)

16 KAR 7 010E	679	8-11-06
20 KAR 1.080E	5	5-24-06
31 KAR 4.140E	1231	10-13-06
31 KAR 4:160E		(See 32 Ky.R.)
Replaced	27	7-26-06
103 KAR 1.050E		(See 32 Ky.R.)
Replaced	29	8-7-06
103 KAR 15:100E		(See 32 Ky.R.)
Replaced	58	8-7-06
103 KAR 16 020E		(See 32 Ky.R.)
Replaced	59	8-7-06
103 KAR 16:060E		(See 32 Ky.R.)
Replaced	59	8-7-06
103 KAR 16 090E		(See 32 Ky.R.)
Replaced	62	8-7-06
103 KAR 16:150E		(See 32 Ky.R.)
Replaced	63	8-7-06
103 KAR 16:210E		(See 32 Ky.R.)
Replaced	66	8-7-06
103 KAR 16 220E		(See 32 Ky.R.)
Replaced	379	9-1-06
103 KAR 16 230E		(See 32 Ky.R.)
Replaced	66	8-7-06
103 KAR 16 240E		(See 32 Ky R.)
Replaced	67	8-7-06
103 KAR 16:250E		(See 32 Ky R.)
Replaced	70	8-7-06
103 KAR 16:270E		(See 32 Ky R)
Replaced	71	8-7-06
103 KAR 16:290E		(See 32 Ky.R.)
Replaced	72	8-7-06
103 KAR 16:300E		(See 32 Ky.R.)
Replaced	73	8-7-06
103 KAR 16:310E		(See 32 Ky.R.)
Replaced	74	8-7-06
103 KAR 16:320E		(See 32 Ky.R.)
Replaced	75	8-7-06
103 KAR 16:330E		(See 32 Ky.R.)
Replaced	75	8-7-06
103 KAR 16:340E		(See 32 Ky.R)
Replaced	76	8-7-06
103 KAR 17:060E		(See 32 Ky.R.)
Replaced	77	8-7-06
103 KAR 17:100E		(See 32 Ky.R)
Replaced	77	8-7-06
103 KAR 28:150E	1044	8-30-06
200 KAR 6 046E	685	8-7-06
201 KAR 15:110E	277	7-12-06
201 KAR 22:070E	279	6-28-06
Withdrawn		10-3-06
301 KAR 2 225E	1045	8-25-06
301 KAR 2 226E	1048	8-25-06
302 KAR 29:050E	686	7-24-06
501 KAR 3 070E		(See 32 Ky.R)
Replaced	102	8-7-06
501 KAR 6 240E	690	7-28-06
502 KAR 10:110E	6	6-15-06
703 KAR 5:020E	691	8-2-06
803 KAR 2 403E	1050	8-24-06
803 KAR 2 425E	1052	8-24-06
803 KAR 2:500E	1054	8-24-06
805 KAR 8.060E	281	7-12-06
806 KAR 17:180E	284	7-12-06
806 KAR 17:520E	286	7-12-06
Withdrawn		10-12-06
806 KAR 17:540E	1233	10-13-06
806 KAR 17:545E	1235	10-13-06
806 KAR 17 555E	1238	10-13-06
825 KAR 1:020E	288	7-12-06
900 KAR 6:030E	1056	9-8-06
900 KAR 6:050		(See 32 Ky R.)
Replaced	103	7-24-06
907 KAR 1:008E	292	6-30-06
Withdrawn		10-12-06\
907 KAR 1 011E	293	6-30-06
907 KAR 1.012E	298	6-30-06
907 KAR 1.014E	300	6-30-06
907 KAR 1:016E	302	6-30-06
Withdrawn		10-12-06
907 KAR 1:019E	123	8-7-06
907 KAR 1:026E	304	6-30-06
907 KAR 1:030E	309	6-30-06
Withdrawn		10-12-06
907 KAR 1:031E	312	6-30-06
907 KAR 1 038E	316	6-30-06
907 KAR 1:155		(See 32 Ky.R.)
Withdrawn		9-1-06
Resubmitted	1058	9-1-06
907 KAR 1:160	1241	10-3-06
907 KAR 1:170E	319	6-30-06
907 KAR 1:350E	322	6-30-06
907 KAR 1:479E	324	6-30-06
907 KAR 1:604E	329	6-30-06
907 KAR 1:626E	335	6-30-06
907 KAR 1:900E	340	6-30-06
907 KAR 3:005E	347	6-30-06
907 KAR 3 010E	350	6-30-06
Withdrawn		9-1-06
Resubmitted	1062	9-1-06
907 KAR 3:125E	354	6-30-06
907 KAR 3:130E	356	6-30-06
907 KAR 3:181E	357	6-30-06
908 KAR 3:050E	359	6-30-06
908 KAR 3:190E	10	6-6-06
921 KAR 2:006E	1248	9-29-06
921 KAR 2:370E	1257	9-29-06
921 KAR 4:118E	360	6-30-06
922 KAR 1:400E	1262	9-29-06
922 KAR 2:170E	362	6-30-06
922 KAR 2:210E	368	6-30-06

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100	
Amended	162
As Amended	698
11 KAR 4:080	258
As Amended	708
11 KAR 5:130	
Amended	175
As Amended	709
11 KAR 5:140	
Amended	176
As Amended	710
11 KAR 5:145	
Amended	178
As Amended	710
11 KAR 6:010	
Amended	179
As Amended	
11 KAR 8.030	
Amended	182

Regulation Number	33 Ky.R. Page No.	Effective Date
As Amended		
11 KAR 16 010		
Amended	185	
As Amended	715	
11 KAR 18:010		
Amended	187	
As Amended	716	
12 KAR 1:114*(r)*	1187	
16 KAR 1:050		(See 32 Ky.R.)
As Amended	17	8-7-06
16 KAR 2:010		
Amended	823	
As Amended	1266	
16 KAR 2:020		
Amended	826	
As Amended	1266	
16 KAR 2.060		(See 32 Ky R.)
As Amended	18	8-7-06
16 KAR 2:140		
Amended	828	
As Amended	1269	
16 KAR 2:150		
Amended	830	
As Amended	1270	
16 KAR 2:160		
Amended	832	
As Amended	1271	
16 KAR 2:170		
Amended	834	
As Amended	1272	
16 KAR 3 080		
Amended	836	
As Amended	1272	
16 KAR 5 010		(See 32 Ky R.)
As Amended	19	8-7-06
16 KAR 5.040		
Amended	838	
As Amended	1274	
16 KAR 6:020		
Amended	840	
As Amended	1275	
16 KAR 6:030		(See 32 Ky.R.)
As Amended	26	8-7-06
16 KAR 7:010		
Amended	843	
As Amended	1277	
16 KAR 7.020		
Amended	1104	
16 KAR 9:040		
Amended	849	
As Amended	1282	
17 IKAR 3 010	1464	
17 KAR 3 020	1466	
17 KAR 4.010	1188	
20 KAR 1:080		
Amended	190	
As Amended	718	
31 KAR 4:040		(See 32 Ky.R.)
As Amended	375	9-1-06
31 KAR 4:140		
Amended	1420	
31 KAR 4:160		(See 32 Ky.R.)
As Amended	27	7-26-06
31 KAR 5:030		
As Amended	375	9-1-06
45 KAR 1.030		
Amended	1422	
45 KAR 1:040		
Amended	1423	
45 KAR 1.050		
Amended	1425	
102 KAR 1:038		
Amended	1427	
102 KAR 1:070		
Amended	1428	
103 KAR 1:040		(See 32 Ky.R.)
As Amended	376	9-1-06
103 KAR 1:050		(See 32 Ky R.)
As Amended	29	
103 KAR 1 090	1003	
Withdrawn		9-12-06
103 KAR 1:092	1189	
103 KAR 1:130	1190	
103 KAR 1 370		
Withdrawn	***	9-11-06
103 KAR 2.005		
Recodified from 103 KAR 7:025		
103 KAR 7:025		
Recodified as 103 KAR 2:005		10-12-06
103 KAR 8:080	1004	
Withdrawn		9-21-06
103 KAR 8:110	1005	
As Amended	1283	
103 KAR 15:020		(See 32 Ky.R.)
As Amended	377	9-1-06
103 KAR 15:100		(See 32 Ky.R.)
As Amended	58	8-7-06
103 KAR 15.140		(See 32 Ky.R.)
As Amended	378	9-1-06
103 KAR 15:160	1006	
Withdrawn		9-5-06
103 KAR 16:020		(See 32 Ky.R.)
As Amended	59	8-7-06
103 KAR 16:060		(See 32 Ky R.)
As Amended	59	8-7-06
103 KAR 16:090		(See 32 Ky.R.)
As Amended	62	8-7-06
103 KAR 16:150		(See 32 Ky.R.)
As Amended	63	8-7-06
103 KAR 16 200		(See 32 Ky.R.)
As Amended	64	8-7-06
103 KAR 16:210		(See 32 Ky.R.)
As Amended	66	8-7-06
103 KAR 16:220		(See 32 Ky.R.)
As Amended	379	9-1-06
103 KAR 16:230		(See 32 Ky.R.)
As Amended	66	8-7-06
103 KAR 16 240		(See 32 Ky.R)
As Amended	67	8-7-06
103 KAR 16 250		(See 32 Ky R)
As Amended	70	8-7-06
103 KAR 16.270		(See 32 Ky R.)
As Amended	71	8-7-06
103 KAR 16:290		(See 32 Ky R.)
As Amended	72	
Amended	1108	
103 KAR 16:300		(See 32 Ky.R.)
As Amended	73	8-7-06
103 KAR 16:310		(See 32 Ky.R.)
As Amended	74	8-7-06
103 KAR 16:320		(See 32 Ky.R.)
As Amended	75	8-7-06
103 KAR 16 330		(See 32 Ky.R.)
As Amended	75	8-7-06
103 KAR 16:340		(See 32 Ky.R.)
As Amended	76	8-7-06
103 KAR 16 350	1007	
Withdrawn		9-5-06
103 KAR 16.352	1192	
103 KAR 16.360	1194	
103 KAR 16:370	1195	
103 KAR 16.380	1197	
103 KAR 16 390	1198	
As Amended	77	8-7-06

Regulation Number	33 Ky.R. Page No.	Effective Date
103 KAR 17:100		(See 32 Ky.R.)
As Amended	77	8-7-06
103 KAR 17:110	1009	
Withdrawn		9-5-06
103 KAR 17:120	1199	
103 KAR 17:130	1201	
103 AKR 17.140	1202	
103 KAR 17:060		(See 32 Ky.R.)
103 KAR 18:070		(See 32 Ky.R.)
As Amended	78	8-7-06
103 KAR 18:160		(See 32 Ky.R.)
As Amended	79	8-7-06
103 KAR 18:170	1011	
Withdrawn		9-5-06
103 KAR 18:172	1203	
103 KAR 18:180	1204	
103 KAR 18:190	1206	
103 KAR 18:200	1207	
103 KAR 18:210	1208	
103 KAR 18:220	1210	
103 KAR 20:030	1012	
Withdrawn		9-5-06
103 KAR 20.035	1211	
103 KAR 20:500	1013	
103 KAR 28:150	1212	
200 KAR 6:045		
Repealed	685	8-7-06
201 KAR 1:015		(See 32 Ky.R.)
As Amended	380	9-1-06
201 KAR 1:050		(See 32 Ky.R.)
As Amended	380	9-1-06
201 KAR 8:150		
Amended	851	
As Amended	1283	
201 KAR 8:260		
Amended	852	
As Amended	1283	
201 KAR 9.041		
Amended	853	
201 KAR 9:084		
Amended	1430	
201 KAR 9:307	1468	
201 KAR 9:400	1469	
201 KAR 9:450	1470	
201 KAR 11:011		
Withdrawn		8-31-06
201 KAR 11:105		(See 32 Ky.R.)
As Amended	719	
201 KAR 11:121		
Withdrawn		8-31-06
201 KAR 11:220		(See 32 Ky.R.)
Amended	449	
As Amended	720	
201 KAR 11:250		(See 32 Ky.R.)
As Amended	721	
201 KAR 11.350		(See 32 Ky.R.)
Amended	451	
As Amended		
201 KAR 11:400		(See 32 Ky.R.)
Amended	454	
As Amended	724	
201 KAR 11:430		(See 32 Ky.R.)
As Amended		
201 KAR 12:020		(See 32 Ky.R.)
As Amended	381	9-1-06
201 KAR 14:180		
Amended	192	
201 KAR 15:110	652	
As Amended	1066	
201 KAR 18:170		
Amended	854	
201 KAR 18:192		
Amended	856	
As Amended	1284	
201 KAR 20:056		
Amended	509	
As Amended	1067	
201 KAR 20:057		
Amended	511	
As Amended	1069	
201 KAR 20.058	654	
*Withdrawn		9-15-06
201 KAR 20:070		
Amended	859	
As Amended	1286	
201 KAR 20:110		
Amended	861	
As Amended	1287	
201 KAR 20:161		
Amended	863	
As Amended	1288	
201 KAR 20:310		
Amended	865	
As Amended	1290	
201 KAR 20:411		
Amended	867	
201 KAR 20:450		
Amended	869	
201 KAR 20.470		
***Withdrawn		7-19-06
Amended	872	
201 KAR 20:490		(See 32 Ky.R.)
As Amended	382	9-1-06
201 KAR 20:500	1013	
As Amended	1291	
201 KAR 21:015		(See 32 Ky.R.)
As Amended		
201 KAR 21:015		(See 32 Ky.R.)
As Amended	1070	
201 KAR 21:025		(See 32 Ky.R.)
As Amended	1071	
201 KAR 21:051		(See 32 Ky.R.)
As Amended	1071	
201 KAR 21:515		(See 32 Ky.R.)
As Amended	1073	
201 KAR 21:085		(See 32 Ky.R.)
As Amended	1073	
201 KAR 21:100		(See 32 Ky.R.)
As Amended	1075	
201 KAR 22:040		
Amended	876	
201 KAR 22.045		(See 32 Ky.R.)
As Amended	384	9-1-06
201 KAR 22:070		
Amended	513	
Withdrawn		10-3-06
Amended	1431	
201 KAR 22:140		
Amended	878	
As Amended	1292	
201 KAR 25:031		(See 32 Ky.R.)
As Amended	80	7-24-06
201 KAR 28:090		
Amended	1110	
201 KAR 28:220	1214	
201 KAR 29:015		(See 32 Ky.R.)
As Amended	385	9-1-06
201 KAR 33:030		
Amended	879	
As Amended	1292	
201 KAR 36.030		(See 32 Ky.R.)
As Amended	81	7-24-06
201 KAR 36 040		(See 32 Ky.R.)
As Amended	83	7-24-06

Regulation Number	33 Ky.R. Page No.	Effective Date
201 KAR 36:070		(See 32 Ky.R.)
As Amended	84	7-24-06
201 KAR 39:050		(See 32 Ky.R.)
As Amended	385	9-1-06
201 KAR 39 070		(See 32 Ky.R.)
As Amended	387	9-1-06
201 KAR 39 090		(See 32 Ky.R.)
As Amended	387	9-1-06
201 KAR 41 060		(See 32 Ky.R.)
As Amended	727	
201 KAR 41:070		(See 32 Ky.R.)
As Amended	728	
201 KAR 41.080		(See 32 Ky.R.)
As Amended	730	
201 KAR 41.090		(See 32 Ky.R.)
As Amended	731	
301 KAR 1:015		(See 32 Ky.R.)
As Amended	85	7-12-06
301 KAR 1:031		
Amended	514	
As Amended	1075	
301 KAR 1:032	655	
As Amended		
301 KAR 1:085		(See 32 Ky.R.)
Amended	135	9-1-06
301 KAR 1:110		(See 32 Ky.R.)
As Amended	86	7-12-06
301 KAR 1:115		(See 32 Ky.R.)
As Amended	86	7-12-06
301 KAR 1:122		(See 32 Ky.R.)
As Amended	87	7-12-06
301 KAR 1:140		
Amended	516	
As Amended	1075	
301 KAR 1:150		(See 32 Ky.R.)
As Amended	87	7-12-06
301 KAR 1:201		(See 32 Ky.R.)
As Amended	88	7-12-06
301 KAR 2:015	1215	
301 KAR 2:075		
Amended	518	
As Amended	1077	
301 KAR 2:083		
Amended	882	
As Amended	1294	
301 KAR 2:132		(See 32 Ky.R.)
As Amended	92	7-12-06
301 KAR 2:176		(See 32 Ky.R.)
As Amended	94	7-12-06
301 KAR 2:178		(See 32 Ky.R.)
As Amended	96	7-12-06
301 KAR 2.225		
Amended	1111	
301 KAR 2:226		
Amended	1114	
301 KAR 2:251		
Amended	519	
As Amended		
301 KAR 3:010		
Amended	1115	
301 KAR 3:100		
Amended	1118	
301 KAR 3:022		
Amended	522	
Amended	1100	
As Amended	1297	
301 KAR 5:050		
Amended	526	
As Amended	1078	
301 KAR 6:020		
Amended	1120	
302 KAR 15.010		
Amended	527	
As Amended	1300	
302 KAR 16:010		
Amended	886	
As Amended	1303	
302 KAR 16:020		
Amended	888	
As Amended	1304	
302 KAR 29:050		
Amended	889	
302 KAR 85.010	656	
As Amended	1306	
401 KAR 4:060		
Amended	1122	
401 KAR 42:005		(See 32 Ky.R.)
Amended	456	
As Amended	732	
401 KAR 42:011		(See 32 Ky.R.)
Amended	460	
As Amended	735	
401 KAR 42:020		(See 32 Ky.R.)
Amended	461	
As Amended	736	
401 KAR 34.030		(See 32 Ky.R.)
As Amended	737	
401 KAR 42.040		(See 32 Ky.R.)
Amended	463	
As Amended	738	
401 KAR 42.050		(See 32 Ky.R.)
As Amended	739	
401 KAR 42.060		(See 32 Ky.R.)
Amended	465	
As Amended	739	
401 KAR 42.070		(See 32 Ky.R.)
Amended	466	
As Amended	740	
401 KAR 42 080		(See 32 Ky.R.)
Amended	469	
As Amended	742	
401 KAR 42:090		(See 32 Ky.R.)
As Amended	743	
401 KAR 42:200		(See 32 Ky.R.)
As Amended	744	
401 KAR 42.250		(See 32 Ky.R.)
Amended	471	
As Amended	745	
401 KAR 42:290		(See 32 Ky.R.)
Amended	476	
As Amended	749	
401 KAR 42:300		(See 32 Ky.R.)
As Amended	752	
401 KAR 42.314		(See 32 Ky.R.)
As Amended	753	
401 KAR 42.316		(See 32 Ky R.)
Amended	480	
As Amended	755	
401 KAR 42.330		(See 32 Ky.R.)
Amended	483	
As Amended		
401 KAR 42:335		(See 32 Ky.R.)
As Amended	759	
401 KAR 42.340		(See 32 Ky.R.)
As Amended	759	
401 KAR 50 010		
Amended	193	
401 KAR 51.001		
Amended	197	
401 KAR 51.210	1015	
401 KAR 51.220	1018	
401 KAR 51:230	1020	
401 KAR 52.001		
Amended	209	

Regulation Number	33 Ky.R. Page No.	Effective Date
401 KAR 59:001		
Amended	213	
401 KAR 61:001		
Amended	217	
401 KAR 63.001		
Amended	220	
401 KAR 65.001		
Amended	224	
500 KAR 13.020		
Amended	531	
Amended	1378	
501 KAR 6 020		
Amended	1130	
501 KAR 6:040		
Amended	1433	
501 KAR 6:060		(See 32 Ky.R.)
As Amended	389	9-1-06
501 KAR 6:130		
Amended		
501 KAR 6:190		(See 32 Ky R.)
As Amended	99	8-7-06
501 KAR 6:240		
Amended	893	
As Amended	1306	
501 KAR 6:999		
Amended	227	
As Amended	760	
502 KAR 10:110		
Amended	230	
As Amended	763	
503 KAR 3:070		(See 32 Ky.R.)
As Amended	102	8-7-06
503 KAR 4:040		
Amended	533	
As Amended	1078	
503 KAR 4:050		
Amended	535	
As Amended	1079	
505 KAR 1:160	1022	
600 KAR 3:030		
Amended	537	
As Amended	1306	
600 KAR 6.010		
Amended	539	
As Amended	1307	
600 KAR 6.020		
Amended	541	
Withdrawn		10-9-06
600 KAR 6:030		
Amended	542	
As Amended	1309	
600 KAR 6:040		
Amended	544	
As Amended	1309	
600 KAR 6:050		
Amended	546	
As Amended	1311	
600 KAR 6:060		
Amended	548	
As Amended	1312	
600 KAR 6:065		
Amended	551	
As Amended	1314	
600 KAR 6:070		
Amended	552	
As Amended	1314	
600 KAR 6.080		
Amended	557	
As Amended	1319	
702 KAR 5.010		
Amended	895	
As Amended	1320	
702 KAR 6:100		
Amended	896	
As Amended	1321	
703 KAR 5 020		
Amended	898	
704 KAR 3:303		(See 32 Ky.R.)
Amended	137	8-706
704 KAR 3.305		(See 32 Ky.R.)
As Amended	766	
704 KAR 3:490		(See 32 Ky.R.)
As Amended	390	8-7-06
704 KAR 3:530		(See 32 Ky.R.)-
As Amended	391	
725 KAR 2:015		
Amended	904	
As Amended	1322	
750 KAR 1 010		
Amended	234	
As Amended	768	
803 KAR 2:180		(See 32 Ky.R.)
As Amended	102	8-7-06
803 KAR 2:403		
Amended	1132	
803 KAR 2:417		
Amended	1134	
803 KAR 2:422		
Amended	1136	
803 KAR 2:425		
Amended	1139	
803 KAR 2 500		
Amended	1141	
803 KAR 2.600		
Amended	1143	
803 KAR 25.010		
Amended	236	
As Amended	770	
803 KAR 25.021		(See 32 Ky.R.)
As Amended	392	8-10-06
804 KAR 4:170		
Withdrawn	***	8-23-06
Amended	1146	
804 KAR 4 230		
Withdrawn	***	8-23-06
Amended	1147	
804 KAR 4.240		
Withdrawn	***	8-23-06
Amended	1149	
804 KAR 4:250		
Withdrawn	***	8-23-06
Amended	1150	
804 KAR 4:330		
Withdrawn	***	8-23-06
Amended	1152	
804 KAR 4:340		
Withdrawn	***	8-23-06
Amended	1153	
804 KAR 4:350		
Withdrawn	***	8-23-06
Amended	1155	
804 KAR 4:380		
Withdrawn	***	8-23-06
Amended	1156	
804 KAR 4:385	***	
Withdrawn		8-23-06
Resubmitted	1216	
804 KAR 4:400	***	
Withdrawn		8-23-06
Resubmitted	1218	
804 KAR 4:410	***	
Withdrawn		8-23-06
Resubmitted	1219	
804 KAR 4:420	***	

Regulation Number	33 Ky.R. Page No.	Effective Date
Withdrawn		8-23-06
Resubmitted	1220	
805 KAR 8.060		
Amended	560	
Amended	1341	
806 KAR 17:021	1023	
806 KAR 17:180		
Amended	564	
As Amended	1325	
806 KAR 17:520	657	
Withdrawn		10-12-06
806 KAR 17.530	659	
Withdrawn		10-12-06
806 KAR 17 540	1471	
806 KAR 17 545	1473	
806 KAR 17.555	1476	
806 KAR 18:061	1025	
808 KAR 1.050		(See 32 Ky.R.)
As Amended	395	9-1-06
810 KAR 1.009		
Amended	245	
Amended	810	
As Amended	1080	
811 KAR 1:005		
Amended	908	
Amended	1345	
811 KAR 1:010		
Amended	911	
811 KAR 1:015		
Amended	914	
811 KAR 1:020		
Amended	920	
811 KAR 1:025		
Amended	922	
811 KAR 1.030		
Amended	924	
811 KAR 1 035		
Amended	927	
811 KAR 1.040		
Amended	931	
811 KAR 1:045		
Amended	933	
811 KAR 1:050		
Amended	936	
811 KAR 1:055		
Amended	938	
Amended	1348	
811 KAR 1:060		
Amended	941	
811 KAR 1:065		
Amended	943	
811 KAR 1:075		
Amended	945	
811 KAR 1:080		
Amended	949	
811 KAR 1:085		
Amended	950	
811 KAR 1.090		
Amended	953	
Amended	1351	
811 KAR 1.095		
Amended	962	
811 KAR 1:100		
Amended	968	
811 KAR 1.105		
Amended	969	
811 KAR 1:110		
Amended	972	
811 KAR 1:130		
Amended	974	
811 KAR 1:135		
Amended	975	
811 KAR 1:140		
Amended	977	
811 KAR 1:145		
Amended	978	
811 KAR 1:155		
Amended	979	
811 KAR 1.160		
Amended	980	
811 KAR 1:171	1026	
811 KAR 1:175		
Amended	982	
811 KAR 1:195		
Amended	983	
811 KAR 1:215		
Amended	984	
811 KAR 1:220		
Amended	988	
811 KAR 1:225		
Amended	991	
815 KAR 6:010		(See 32 Ky R.)
As Amended	778	
815 KAR 6.020		(See 32 Ky.R.)
As Amended	779	
815 KAR 6.030		(See 32 Ky R.)
As Amended	780	
815 KAR 6 040		(See 32 Ky R.)
As Amended	781	
815 KAR 10.060		(See 32 Ky R.)
As Amended	395	9-1-06
815 KAR 20:020		(See 32 Ky.R.)
As Amended	400	9-1-06
815 KAR 20:030		(See 32 Ky.R.)
As Amended	403	9-1-06
815 KAR 20:050		(See 32 Ky.R.)
As Amended	404	9-1-06
815 KAR 20.055		(See 32 Ky.R.)
As Amended	406	9-1-06
815 KAR 20 070		(See 32 Ky.R.)
As Amended	406	9-1-06
815 KAR 20 090		(See 32 Ky.R.)
As Amended	408	9-1-06
815 KAR 20:120		(See 32 Ky.R.)
As Amended	411	9-1-06
815 KAR 35:060		(See 32 Ky.R.)
As Amended	417	9-1-06
825 KAR 1:020		
Amended	566	
900 KAR 6:030		
Amended	1158	
900 KAR 6:050		(See 32 Ky.R.)
As Amended	103	7-24-06
901 KAR 5 020		
Amended	1434	
902 KAR 20:074		(See 32 Ky.R.)
Amended	814	
As Amended	1083	
902 KAR 20:091		(See 32 Ky R.)
As Amended	117	7-24-06
902 KAR 20:240		
Amended	1159	
902 KAR 20:390	259	
Amended	820	
As Amended	1089	
902 KAR 55:030		
Amended	1436	
902 KAR 55:035		
Amended		
902 KAR 55:110		(See 32 Ky.R.)
As Amended	120	7-24-06
906 KAR 1:100		(See 32 Ky.R.)
As Amended	418	9-1-06
906 KAR 1:110		(See 32 Ky.R.)

Regulation Number	33 Ky.R. Page No.	Effective Date
As Amended	121	7-24-06
907 KAR 1:008		
Amended	570	
Withdrawn		10-12-06
907 KAR 1:011		
Amended	571	
Amended	1360	
907 KAR 1:012		
Amended	576	
Amended	1366	
907 KAR 1:014		
Amended	578	
907 KAR 1:016		
Amended	580	
Withdrawn		10-12-06
907 KAR 1:019		(See 32 Ky R.)
As Amended	123	8-7-06
907 KAR 1 026		
Amended	582	
Amended	1371	
907 KAR 1.030		
Amended	587	
Withdrawn		10-12-06
907 KAR 1:031		
Amended	589	
907 KAR 1:038		
Amended	594	
Amended	1377	
907 KAR 1:145		(See 32 Ky.R.)
Amended	486	
As Amended	782	
907 KAR 1:155		(See 32 Ky.R.)
Amended	498	
As Amended	794	
Withdrawn		9-1-06
Amended	1169	
907 KAR 1:160		
Amended	1439	
907 KAR 1:170		
Amended	597	
As Amended	1326	
907 KAR 1:350		
Amended	600	
907 KAR 1:450		
Amended	994	
As Amended	1328	
907 KAR 1:479		
Amended	602	
Amended	1380	
907 KAR 1.604		
Amended	607	
Amended	1386	
907 KAR 1:626		
Amended	613	
Amended	1393	
907 KAR 1:645		
Amended	1173	
907 KAR 1:650		
Amended	1176	
907 KAR 1:900	660	
Amended	1398	
907 KAR 3:005		
Amended	617	
Amended	1405	
907 KAR 3.010		
Amended	621	
Withdrawn		9-1-06
Amended	1180	
907 KAR 3.125		
Amended	624	
Amended	1409	
907 KAR 3:130		
Amended	626	
Amended	1412	
907 KAR 3:181	667	
908 KAR 3:050		
Amended	628	
As Amended	1090	
908 KAR 3:060		(See 32 Ky R.)
As Amended	128	7-24-06
908 KAR 3:190		
As Amended	261	
As Amended	796	
910 KAR 1.260	1027	
As Amended	1332	
920 KAR 3.010	1479	
921 KAR 1:380		
Amended	629	
As Amended	1090	
921 KAR 1:390		
Amended	634	
As Amended	1095	
921 KAR 1.400		
Amended	636	
As Amended	1096	
921 KAR 1:410		
Amended	249	
921 KAR 1:420		
Amended	1183	
921 KAR 2 006		
Amended	1446	
921 KAR 2.055		(See 32 Ky.R.)
Amended	138	
As Amended	421	9-1-06
921 KAR 2:370		
Amended	1455	
921 KAR 3.035		
Amended	254	
As Amended	800	
921 KAR 3 042		
Amended	998	
As Amended	1334	
921 KAR 3:050		(See 32 Ky.R.)
As Amended	425	9-1-06
921 KAR 3.060		(See 32 Ky.R.)
As Amended	131	7-24-06
921 KAR 3 070		(See 32 Ky.R.)
Amended	143	
As Amended	429	9-1-06
921 KAR 4:118		
Amended	638	
As Amended	1098	
922 KAR 1:350		(See 32 Ky R.)
Amended	149	
As Amended	435	9-1-06
922 KAR 1:400		
Amended	1460	
922 KAR 2:160		(See 32 Ky.R.)
Amended	500	
As Amended	802	
922 KAR 2:170		
Amended	641	
922 KAR 2:180		(See 32 Ky.R.)
As Amended	443	9-1-06
922 KAR 2.210		
Amended	646	
Amended	1414	
922 KAR 2:240		(See 32 Ky R.)
Amended	158	
As Amended	445	

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS SECTION	REGULATION	KRS SECTION	REGULATION
12.010-12.020	401 KAR 42.290		45 KAR 1:050
13A	901 KAR 5.020	67A.620	921 KAR 1:410
13A.010	103 KAR 1:092	68.210	45 KAR 1:030
	103 KAR 16:352		45 KAR 1:040
	103 KAR 18:172		45 KAR 1:050
	103 KAR 20:035	81.010	922 KAR 2:160
13A.100	103 KAR 1:092	95 620	921 KAR 1:410
	103 KAR 16:352	95.878	921 KAR 1:410
	103 KAR 18:172	117.235	31 KAR 4:040
	103 KAR 20 035	117.255	31 KAR 4 040
13A.120	103 KAR 1:092	131.081	103 KAR 15 020
	103 KAR 16:352	131.110	103 KAR 15 020
	103 KAR 18:172	131.130	103 KAR 1:092
	103 KAR 20:035		103 KAR 16:352
13A.310	806 KAR 17:021		103 KAR 16:390
	806 KAR 18:061		103 KAR 18:172
13B	725 KAR 2:015		103 KAR 20:035
	825 KAR 1:020	131.180	103 KAR 17:120
	910 KAR 1:260	132.487	103 KAR 8:110
	921 KAR 2:055	136.290	103 KAR 1:130
	921 KAR 3:070	136.300	103 KAR 1:130
13B.010	921 KAR 1:400	136.310	103 KAR 1:130
	921 KAR 1:410	136.320	103 KAR 1:130
	921 KAR 1:420	139.050	103 KAR 28:150
13B.125	922 KAR 2:170	139.100	103 KAR 28:150
	922 KAR 2:210	139.110	103 KAR 28:150
13B.170	921 KAR 1:410	139.120	103 KAR 28:150
	921 KAR 1:420	139.140	103 KAR 28:150
15A.065	500 KAR 13.020	139.200	103 KAR 28.150
	505 KAR 1:160	139.260	103 KAR 28:150
15A.067	505 KAR 1:160	139.470	103 KAR 28:150
40.320	17 KAR 3.010	141.010	103 KAR 1:130
	17 KAR 3:020		103 KAR 15:020
40.325	17 KAR 3:010		103 KAR 15:140
	17 KAR 3:020		103 KAR 16.360
40.360	17 KAR 4:010		103 KAR 16.370
40.362	17 KAR 4.010		103 KAR 16:380
40.364	17 KAR 4.010	141.020	103 KAR 15:140
40.366	17 KAR 4.010		103 KAR 17:130
43.070	45 KAR 1:030	141.040	103 KAR 15:140
	45 KAR 1:040		103 KAR 16:360
	45 KAR 1:050		103 KAR 16 370
43.075	45 KAR 1:030	141.050	103 KAR 16:370
	45 KAR 1:040		103 KAR 17:120
	45 KAR 1:050	141 070	103 KAR 17:140
45.237	921 KAR 2.055	141.120	103 KAR 16:290
	921 KAR 3.070	141 200	103 KAR 15:020
45.237 - 45.241	922 KAR 2:160	141.300	103 KAR 17:120
45A.030	600 KAR 6:010	141.305	103 KAR 17:120
45A.085	600 KAR 6 010	141.347	103 KAR 18:190
45A.095	600 KAR 6.010	141.400	103 KAR 18:200
45A.800 - 835	600 KAR 6:010	141.401	103 KAR 18:220
	600 KAR 6.030	141.403	103 KAR 18:180
	600 KAR 6:040	141.407	103 KAR 18:210
	600 KAR 6:050	141.446	920 KAR 3:010
	600 KAR 6:060	141.990	103 KAR 17:120
	600 KAR 6:065	150.010	301 KAR 2.015
	600 KAR 6:070		301 KAR 2:226
	600 KAR 6:080	150.015	301 KAR 2.075
45A.838	600 KAR 6:010	150.021	301 KAR 2.075
	600 KAR 6:065	150.025	301 KAR 1:031
	600 KAR 6:070		301 KAR 1.032
61.870 - 884	922 KAR 1:350		301 KAR 1:085
64.530	45 KAR 1:040		301 KAR 2 083
64.810	45 KAR 1:030		301 KAR 2:226
	45 KAR 1:040		301 KAR 2:251

KRS SECTION	REGULATION
	301 KAR 3:010
	301 KAR 3:022
150.090	301 KAR 1:031
150.110	301 KAR 1:085
150.170	301 KAR 1:031
	301 KAR 1:085
	301 KAR 3:100
150.175	301 KAR 3:022
	301 KAR 1:031
	301 KAR 1:032
	301 KAR 1:085
	301 KAR 3:100
150.177	301 KAR 3:100
150.180	301 KAR 3.022
150.183	301 KAR 2:075
	301 KAR 3:022
150.195	301 KAR 5:050
	301 KAR 2:075
150.225	301 KAR 5:050
150.235	301 KAR 5:050
150.240	301 KAR 3.022
150.250	301 KAR 1:031
150.275	301 KAR 3:022
150.280	301 KAR 2:083
	301 KAR 3.022
150.290	301 KAR 2.083
	301 KAR 3:022
150.305	301 KAR 2:226
150.330	301 KAR 2 225
	301 KAR 2:226
150.340	301 KAR 1.031
	301 KAR 2:225
	301 KAR 2:226
	301 KAR 2:251
150.360	301 KAR 1 031
	301 KAR 2.225
150.370	301 KAR 1:031
	301 KAR 2:251
150.399	301 KAR 2.251
150.400	301 KAR 2:251
150.410	301 KAR 2:251
150.450	301 KAR 1:140
150.470	301 KAR 1:031
150.485	301 KAR 3:022
150.520	301 KAR 1:085
	301 KAR 3:022
150.525	301 KAR 1:085
	301 KAR 3:022
150 600	301 KAR 2:226
	301 KAR 3:022
150.603	301 KAR 2:225
	301 KAR 3:022
150.620	301 KAR 2:225
	301 KAR 3:010
	301 KAR 3:022
150.640	301 KAR 3:010
150.660	301 KAR 3:022
150.720	301 KAR 3:022
150.990	301 KAR 2:226
	301 KAR 2:251
151.100	401 KAR 4:060
151.110	401 KAR 4:060
151.182	401 KAR 4:060
151.184	401 KAR 4 060
151.186	401 KAR 4:060
151.210	401 KAR 4:060
151.250	401 KAR 4.060
151.260	401 KAR 4:060

KRS SECTION	REGULATION
151.280	401 KAR 4:060
151.310	401 KAR 4.060
154.22	103 KAR 18:190
154.23	103 KAR 18:220
154.24	103 KAR 18.210
154.26 - 100	103 KAR 18:180
154.28	103 KAR 18:200
156.070	702 KAR 6:100
	704 KAR 3:303
156.095	16 KAR 2:020
156.101	16 KAR 7.010
156.160	702 KAR 5:010
	702 KAR 6:100
	704 KAR 3.303
157.3175	16 KAR 2:140
157.370	702 KAR 5:010
157.420	750 KAR 1:010
157.440	750 KAR 1:010
157.611	750 KAR 1:010
157.615	750 KAR 1:010
157.617	750 KAR 1:010
157.620	750 KAR 1:010
157.622	750 KAR 1:010
158 645	703 KAR 5:020
	704 KAR 3:305
158 6451	16 KAR 2:010
	703 KAR 5:020
	704 KAR 3:303
158.6453	703 KAR 5:020
158.6455	703 KAR 5.020
158 6457	703 KAR 5 020
158.842	704 KAR 3:490
160.290	704 KAR 3.303
161.020	16 KAR 2:010
	16 KAR 2.020
	16 KAR 2:140
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 3.080
	16 KAR 7.020
	16 KAR 9:040
161.025	16 KAR 3.080
161.027	16 KAR 3.080
	16 KAR 7:020
161.028	16 KAR 2:010
	16 KAR 2:020
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 2:170
	16 KAR 5:040
	16 KAR 6:020
	16 KAR 7:010
	16 KAR 7:020
	16 KAR 9:040
161.030	16 KAR 2:010
	16 KAR 2:020
	16 KAR 2:140
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 2:170
	16 KAR 3:080
	16 KAR 5 040
	16 KAR 6 020
	16 KAR 7.010
	16 KAR 9 040
161.042	16 KAR 5 040
161.046	16 KAR 9.040
161.048	16 KAR 7:010

KRS SECTION	REGULATION
	16 KAR 9.040
161.095	16 KAR 7:010
161.120	16 KAR 9:040
161.700	921 KAR 1:410
164 518	922 KAR 2.240
	11 KAR 4:080
	11 KAR 16.010
161.545	102 KAR 1:038
161.600	102 KAR 1:070
161.640	102 KAR 1:070
164.744	11 KAR 3:100
	11 KAR 4.080
	11 KAR 5:140
	11 KAR 5.145
	11 KAR 6:010
	11 KAR 8:030
	11 KAR 18:010
164.748	11 KAR 3.100
	11 KAR 5.130
	11 KAR 4:080
	11 KAR 6:010
	11 KAR 18:010
164.753	11 KAR 3:100
	11 KAR 4:080
	11 KAR 5:130
	11 KAR 5:140
	11 KAR 5:145
	11 KAR 6:010
	11 KAR 8:030
164.7535	11 KAR 4:080
	11 KAR 5:130
	11 KAR 5:145
164.769	11 KAR 4:080
	11 KAR 8:030
164.772	201 KAR 22:040
164.780	11 KAR 4:080
	11 KAR 5:130
	11 KAR 5:140
164.785	11 KAR 4:080
	11 KAR 5:130
	11 KAR 5:140
164.7889	11 KAR 5:145
171.027	725 KAR 2:015
171.125	725 KAR 2.015
173.040	725 KAR 2:015
173.340	725 KAR 2:015
173.480	725 KAR 2:015
173.725	725 KAR 2:015
177.035	600 KAR 3 030
177.170	600 KAR 3 030
177.430	600 KAR 3:030
179.265	600 KAR 3.030
186.570	921 KAR 1:390
	921 KAR 1:410
189.540	702 KAR 5:010
194A.030	902 KAR 20:074
	902 KAR 20:240
	906 KAR 1:100
	921 KAR 4.118
194A 050	201 KAR 20:070
	902 KAR 20:390
194A.060	922 KAR 1:350
194A.095	920 KAR 3.010
194A.540	201 KAR 20:070
	201 KAR 20:110
196	501 KAR 6:040
	501 KAR 6:130
	501 KAR 6:240

KRS SECTION	REGULATION
	501 KAR 6 999
197	501 KAR 6.040
	501 KAR 6:130
	501 KAR 6:240
	501 KAR 6:999
198B.020	725 KAR 2:015
198B.050	725 KAR 2:015
199.011	910 KAR 1:260
	922 KAR 1:350
	922 KAR 1:400
199.892	922 KAR 2:160
199 894	922 KAR 2:160
	922 KAR 2:210
199 8941	922 KAR 2:210
	922 KAR 2:240
199.8943	922 KAR 2:210
199.896	922 KAR 2:160
	922 KAR 2:240
199.898	922 KAR 2:160
199.899	922 KAR 2:160
199.8982	922 KAR 2:160
	922 KAR 2:210
	922 KAR 2:240
	922 KAR 2:210
199.8994	922 KAR 2:160
199.990	922 KAR 2:210
200.080 - 200.120	505 KAR 1:160
200.151	922 KAR 2:240
200.711	922 KAR 2:240
202A.011	922 KAR 1:350
	922 KAR 2:160
205.010	921 KAR 2:006
205.200	921 KAR 2:370
205.2003	921 KAR 2:370
	922 KAR 1:400
205.2005	921 KAR 2:006
205.211	921 KAR 2:055
205.231	921 KAR 3:070
205.237	921 KAR 2:055
205.455	910 KAR 1:260
205.520	907 KAR 1:011
	907 KAR 1:012
	907 KAR 1:014
	907 KAR 1:026
	907 KAR 1:038
	907 KAR 1:145
	907 KAR 1:155
	907 KAR 1:160
	907 KAR 1:350
	907 KAR 1:450
	907 KAR 1:479
	907 KAR 1:626
	907 KAR 1:645
	907 KAR 1:650
	907 KAR 1:900
	907 KAR 3.005
	907 KAR 3:130
205.5605 - 205.5607	907 KAR 1:160
205.5606	907 KAR 1:145
205 595	921 KAR 1:410
205 560	907 KAR 1:604
	907 KAR 1:900
	907 KAR 3:010
205.6312	907 KAR 1:604
205.6322	907 KAR 1:650
205.639	907 KAR 3:181
205.640	907 KAR 3:181
205.6312	907 KAR 1.900

KRS SECTION	REGULATION
205.6481 - 6497	907 KAR 1:900
205.6485	907 KAR 1:604
205.703	921 KAR 2:006
	922 KAR 1:400
205.705	921 KAR 1:380
205.710 - 205 800	921 KAR 1:380
	921 KAR 1:390
	921 KAR 1:400
	921 KAR 1:410
205.720	921 KAR 1:420
	921 KAR 2:006
205.750	921 KAR 1:420
205.755	921 KAR 1:420
205.795	921 KAR 1:420
205.8451	907 KAR 1:026
	907 KAR 1:604
	907 KAR 1:900
205.990	921 KAR 1:400
205.992	921 KAR 1:380
209.020	922 KAR 1:400
210.710	908 KAR 3·050
210.720	908 KAR 3 050
210.730	908 KAR 3·050
211.580	920 KAR 3.010
211.585	920 KAR 3:010
211.590	920 KAR 3 010
211.842 - 852	902 KAR 20.074
213	901 KAR 5:020
213.036	921 KAR 1:390
213 046	921 KAR 1:380
	921 KAR 1:390
	921 KAR 1:400
214.036	922 KAR 2.160
214.610	201 KAR 22:040
214.615	201 KAR 20:070
216.2960	806 KAR 17 021
216.532	902 KAR 20 390
	906 KAR 1:100
216.789	902 KAR 20 390
216.935	906 KAR 1:100
216.936	902 KAR 20·390
216.937	906 KAR 1.100
216B.010	902 KAR 20.074
	902 KAR 20.240
216B.010 - 130	900 KAR 6:030
216B.015	902 KAR 20:074
	902 KAR 20:240
216B.040	902 KAR 20:240
	902 KAR 20:390
216B.042	902 KAR 20:074
216B.045 - 055	902 KAR 20:074
	902 KAR 20:240
216B 075	902 KAR 20:074
	902 KAR 20:240
216B.105 - 131	902 KAR 20:074
	902 KAR 20:240
216B.176	902 KAR 20:074
216B.177	902 KAR 20:074
216B.455	900 KAR 6:030
216B 990	900 KAR 6:030
	902 KAR 20:074
	902 KAR 20:240
217B	302 KAR 29:050
218A 010 - 218A.030	902 KAR 55:030
	902 KAR 55:035
218A.050	902 KAR 20:074
	908 KAR 3:190
218A.070	908 KAR 3:190

KRS SECTION	REGULATION
218A.100	902 KAR 55:030
218A.110	902 KAR 55.030
218A.120	902 KAR 55.035
218A.130	902 KAR 55.035
224.01	401 KAR 42:005
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:080
224.01 - 010	401 KAR 50:010
	401 KAR 51:001
	401 KAR 52:001
	401 KAR 59:001
	401 KAR 61:001
	401 KAR 63:001
224.01 - 400	401 KAR 42:250
224.01 - 405	401 KAR 42:250
224.10	401 KAR 42:005
	401 KAR 42:011
	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:040
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:080
224.10 - 100	401 KAR 42:200
	401 KAR 51:210
	401 KAR 51:220
	401 KAR 51:230
	401 KAR 65.001
224.10 - 420	401 KAR 42:314
	401 KAR 42:316
	401 KAR 42:340
224.10 - 440	401 KAR 42.314
	401 KAR 42:316
	401 KAR 42:340
224.20 - 100	401 KAR 50.010
	401 KAR 51:001
	401 KAR 51.210
	401 KAR 51:220
	401 KAR 51 230
	401 KAR 52:001
	401 KAR 59 001
	401 KAR 61.001
	401 KAR 63 001
	401 KAR 65:001
224.20 - 110	401 KAR 50:010
	401 KAR 51:001
	401 KAR 51:210
	401 KAR 51:220
	401 KAR 51:230
	401 KAR 52:001
	401 KAR 59:001
	401 KAR 61:001
	401 KAR 63:001
	401 KAR 65:001
224.20 - 120	401 KAR 50:010
	401 KAR 51:001
	401 KAR 51:210
	401 KAR 51:220
	401 KAR 51:230
	401 KAR 52:001
	401 KAR 59:001
	401 KAR 61:001
224.40	401 KAR 42 060
	401 KAR 42.070
	401 KAR 42.080
224.43	401 KAR 42 060
	401 KAR 42·070

KRS SECTION	REGULATION
	401 KAR 42:080
224.46	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:080
224.60	401 KAR 42.005
	401 KAR 42.011
	401 KAR 42:020
	401 KAR 42:040
	401 KAR 42:060
	401 KAR 42:080
224.60 - 105	401 KAR 42:330
224.60 - 120	401 KAR 42.250
	401 KAR 42:290
224.60 - 130	401 KAR 42:250
	401 KAR 42:290
	401 KAR 42:316
	401 KAR 42:330
224.60 - 135	401 KAR 42.250
224.60 - 140	401 KAR 42:250
	401 KAR 42:290
	401 KAR 42:316
	401 KAR 42:330
224.60 - 150	401 KAR 42:250
	401 KAR 42:316
227.300	725 KAR 2:015
	815 KAR 10.060
227.320	815 KAR 10.060
227.330	815 KAR 10:060
227.990	815 KAR 10:060
230.210 - 360	810 KAR 1:009
230.215	811 KAR 1:005
	811 KAR 1:010
	811 KAR 1:020
	811 KAR 1:025
	811 KAR 1:030
	811 KAR 1:035
	811 KAR 1:040
	811 KAR 1:045
	811 KAR 1:050
	811 KAR 1:055
	811 KAR 1:060
	811 KAR 1:065
	811 KAR 1:075
	811 KAR 1:080
	811 KAR 1:085
	811 KAR 1.090
	811 KAR 1:095
	811 KAR 1:100
	811 KAR 1:105
	811 KAR 1:110
	811 KAR 1:130
	811 KAR 1:135
	811 KAR 1:140
	811 KAR 1:145
	811 KAR 1:155
	811 KAR 1:160
	811 KAR 1:171
	811 KAR 1:175
	811 KAR 1:195
	811 KAR 1:215
	811 KAR 1:220
	811 KAR 1:225
230.240	811 KAR 1:015
	811 KAR 1 090
230 260	811 KAR 1:005
	811 KAR 1.010
	811 KAR 1:015
	811 KAR 1:020

KRS SECTION	REGULATION
	811 KAR 1:030
	811 KAR 1:035
	811 KAR 1:040
	811 KAR 1:045
	811 KAR 1:050
	811 KAR 1:055
	811 KAR 1:060
	811 KAR 1:065
	811 KAR 1:075
	811 KAR 1.080
	811 KAR 1 085
	811 KAR 1:090
	811 KAR 1:095
	811 KAR 1:100
	811 KAR 1:105
	811 KAR 1:110
	811 KAR 1:130
	811 KAR 1:135
	811 KAR 1:140
	811 KAR 1:145
	811 KAR 1:155
	811 KAR 1:160
	811 KAR 1:171
	811 KAR 1:175
	811 KAR 1:215
	811 KAR 1:220
	811 KAR 1:225
230.265	811 KAR 1:090
	811 KAR 1:095
230.280	811 KAR 1:075
	811 KAR 1.220
230 290	811 KAR 1.015
	811 KAR 1:075
	811 KAR 1:090
	811 KAR 1:095
	811 KAR 1:220
	811 KAR 1:225
230.300	811 KAR 1:075
	811 KAR 1:095
	811 KAR 1:220
230.310	811 KAR 1:015
	811 KAR 1:025
	811 KAR 1:075
	811 KAR 1:085
	811 KAR 1:090
	811 KAR 1:220
	811 KAR 1:225
230.320	811 KAR 1:075
	811 KAR 1:090
	811 KAR 1:095
	811 KAR 1:105
230.330	811 KAR 1:105
230.750	811 KAR 1:195
230.770	811 KAR 1.215
230.802	811 KAR 1:215
230.990	811 KAR 1.215
235.200	301 KAR 6:020
235.205	301 KAR 6:020
235.280	301 KAR 6:020
237.110	503 KAR 4:040
	503 KAR 4:050
	921 KAR 1:390
	921 KAR 1:410
237.120	503 KAR 4.0404
237.122	503 KAR 4:040
237.124	503 KAR 4:040
	503 KAR 4:050
237.136	503 KAR 4.040

KRS SECTION	REGULATION
241.010	804 KAR 4.380
241.060	804 KAR 4:240
	804 KAR 4:400
	804 KAR 4:410
243 030	804 KAR 4:170
	804 KAR 4:230
	804 KAR 4:380
	804 KAR 4:420
243.040	804 KAR 4:340
	804 KAR 4:350
243.090	804 KAR 4:340
	804 KAR 4.380
243.050	804 KAR 4:230
243.155	804 KAR 4·330
	804 KAR 4:380
243.200	804 KAR 4 170
243.254	804 KAR 4.420
243 260	804 KAR 4·250
243.290	804 KAR 4:250
243.360	804 KAR 4:350
243.380	804 KAR 4:400
	804 KAR 4:410
243.390	804 KAR 4:400
	804 KAR 4:410
243.730	804 KAR 4:380
243.884	804 KAR 4:380
244.165	804 KAR 4:330
	804 KAR 4:380
244.230	804 KAR 4:385
244.235	804 KAR 4 385
244.440	804 KAR 4:240
247.220	302 KAR 15:010
247.232	302 KAR 16 010
	302 KAR 16.020
247.234	302 KAR 16:010
	302 KAR 16·020
247.236	302 KAR 16:010
247.990	302 KAR 16:010
	302 KAR 16:020
250.021 - 111	12 KAR 1:114
281A.160	502 KAR 10:110
304.14-120	806 KAR 17:555
304.14-430 - 304.14-450	806 KAR 17:555
304.17A-071	806 KAR 17:021
304.17A-080	806 KAR 17:180
304.17A-095 - 304.17A-0954	806 KAR 17:555
304.17A-250	806 KAR 17.180
304.18-050	806 KAR 18:061
310.041	201 KAR 33:030
310.050	201 KAR 33.030
311	902 KAR 20:074
311.550	201 KAR 9·084
311.560	201 KAR 9:084
311.565	201 KAR 9.041
	201 KAR 9:084
311.673	201 KAR 9:450
311.720	922 KAR 1:350
311.870	201 KAR 9:400
311.901	201 KAR 9:307
312.015	907 KAR 3:125
312.017	907 KAR 3:125
313.040	201 KAR 8:150
313.300	201 KAR 8·260
314	902 KAR 20.074
314.011	201 KAR 20 056
	201 KAR 20 057
	201 KAR 20:161
	902 KAR 20·390

KRS SECTION	REGULATION
	922 KAR 1:350
314.025	906 KAR 1:100
314.031	201 KAR 20:110
	201 KAR 20:161
314.035	201 KAR 20:470
314.041	201 KAR 20:070
	201 KAR 20:110
314.042	201 KAR 20 056
	201 KAR 20 057
314.051	201 KAR 20 070
	201 KAR 20.110
317.085	201 KAR 20:450
314.091	201 KAR 20.450
314.101	201 KAR 20:101
314.103	201 KAR 20:110
314.111	201 KAR 20.310
314.137	201 KAR 20:470
314.171	201 KAR 20:161
	201 KAR 20:450
314.091	201 KAR 20:056
	201 KAR 20:161
314.142	201 KAR 20:411
314.161	201 KAR 20:056
314.193	201 KAR 20:057
314.470	201 KAR 20.056
	201 KAR 20.070
	201 KAR 20:110
	201 KAR 20:161
	201 KAR 20 310
	201 KAR 20:411
	201 KAR 20.450
	201 KAR 20:500
314 991	201 KAR 20:161
316 010	201 KAR 15:110
316.125	201 KAR 15:110
316.127	201 KAR 15:110
317.450	201 KAR 14:180
318.030	815 KAR 20:050
318.134	815 KAR 20:050
318.160	815 KAR 20:050
318.200	815 KAR 20:055
319A.010	907 KAR 1:604
	907 KAR 1:900
319A.030	201 KAR 28:220
319A.160	201 KAR 28:090
322.010	725 KAR 2:015
322.270	201 KAR 18:170
322.290	201 KAR 18 192
323.010	725 KAR 2:015
323 020	725 KAR 2.015
324.010	201 KAR 11:220
324 160	201 KAR 11:400
324.360	201 KAR 11:350
324.395	201 KAR 11·220
327.010	907 KAR 1.604
	907 KAR 1:900
327.040	201 KAR 22:140
327.045	201 KAR 22:140
327.050	201 KAR 22:040
	201 KAR 22:070
327.060	201 KAR 22:070
327.070	201 KAR 22:040
	201 KAR 22:140
334A.020	907 KAR 1:604
	907 KAR 1:900
338	803 KAR 2:417
338.051	803 KAR 2:403
	803 KAR 2:422

KRS SECTION	REGULATION
	803 KAR 2:425
	803 KAR 2:500
	803 KAR 2:600
338.061	803 KAR 2:403
	803 KAR 2:422
	803 KAR 2:425
	803 KAR 2:500
	803 KAR 2:600
341	725 KAR 2.015
341.360	907 KAR 1:011
342	725 KAR 2:015
342.0011	803 KAR 25:010
342.125	803 KAR 25:010
342.260	803 KAR 25:010
342.265	803 KAR 25:010
342.270	803 KAR 25.010
342.300	803 KAR 25:010
342.310	803 KAR 25.010
342.315	803 KAR 25 010
342.710	803 KAR 25:010
342.715	803 KAR 25:010
342.732	803 KAR 25.010
342.760	803 KAR 25.010
344	725 KAR 2:015
351.025	825 KAR 1:020
351.105	825 KAR 1:020
351.194	825 KAR 1:020
351.1041	825 KAR 1:020
	805 KAR 8:060
351.175	805 KAR 8:060
351.194	805 KAR 8:060
352.010 - 352.550	805 KAR 8 060
363.590	302 KAR 85.010
363.610	302 KAR 85 010
393.110	20 KAR 1:080
393.130	20 KAR 1.080
403.210 - 403.240	921 KAR 1 400
403.160	921 KAR 1:400
403.215	921 KAR 1:410
405.060	921 KAR 1:410
405.405	921 KAR 1:410
405.430	921 KAR 1:380
	921 KAR 1:390
	921 KAR 1:400
405.430 - 510	921 KAR 1:410
405.440	921 KAR 1:400
405.450	921 KAR 1:400
405.520	921 KAR 1:380
	921 KAR 1:420
405.991	921 KAR 1:400
406.011	921 KAR 1:390
406.021	921 KAR 1:380
	921 KAR 1:400
406.025	921 KAR 1:380
	921 KAR 1:390
	921 KAR 1:400
406.21	921 KAR 1:390
406.180	921 KAR 1:390
407.5101	921 KAR 1:420
407.5101 - 5701	921 KAR 1:410
407. 5101 - 5902	921 KAR 1:380
427.120	921 KAR 1:410
427.125	921 KAR 1:410
439	501 KAR 6.040
	501 KAR 6:130
	501 KAR 6 240
	501 KAR 6.999
447.53	907 KAR 1:038

KRS SECTION	REGULATION
454.220	921 KAR 1:400
457.310	907 KAR 1:038
532	501 KAR 6:240
600-645	505 KAR 1:160
605.090	922 KAR 1:350
605.100	922 KAR 1:350
605.120	922 KAR 2:160
610.110	922 KAR 1:400
610.170	921 KAR 1:380
620.020	922 KAR 2:160
620.030	922 KAR 1:350
620.050	922 KAR 1:350
625	922 KAR 1:350
7 C F.R.	702 KAR 6:100
	921 KAR 3:042
	921 KAR 3 035
	921 KAR 3:070
10 C.F.R.	921 KAR 4:118
16 C.F.R.	922 KAR 1:350
20 C.F.R.	907 KAR 1:900
21 C.F.R.	902 KAR 55:030
	902 KAR 55:035
23 C.F.R.	600 KAR 3:030
	600 KAR 6:010
	600 KAR 6:030
	600 KAR 6:040
	600 KAR 6:050
	600 KAR 6:060
	600 KAR 6.065
	600 KAR 6:070
	600 KAR 6.080
26 C F R.	600 KAR 6:080
29 C.F.R.	803 KAR 2:403
	803 KAR 2:417
	803 KAR 2:422
	803 KAR 2:425
	803 KAR 2:500
	803 KAR 2:600
	902 KAR 20:074
31 C.F.R.	600 KAR 3:030
34 C.F.R.	11 KAR 3.100
	11 KAR 18 010
	11 KAR 4:080
40 C.F.R.	401 KAR 42:005
	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:040
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:080
	401 KAR 42:330
	401 KAR 50:010
	401 KAR 51:001
	401 KAR 51:210
	401 KAR 51:220
	401 KAR 51:230
	401 KAR 59:001
	401 KAR 61:001
	401 KAR 63:001
	401 KAR 65:001
42 C.F.R.	902 KAR 20:074
	902 KAR 20:390
	906 KAR 1:100
	907 KAR 1:011
	907 KAR 1:014
	907 KAR 1:031
	907 KAR 1:038
	907 KAR 1:145

KRS SECTION	REGULATION
	907 KAR 1:155
	907 KAR 1:170
	907 KAR 1:350
	907 KAR 1:450
	907 KAR 1:479
	907 KAR 1:604
	907 KAR 1:626
	907 KAR 1:645
	907 KAR 1:900
	907 KAR 3:125
	907 KAR 3:130
	907 KAR 3:181
44 C.F.R.	401 KAR 4 060
45 C.F.R.	907 KAR 1:011
	907 KAR 1:900
	921 KAR 1.380
	921 KAR 1:410
	921 KAR 1:420
	922 KAR 1:350
	922 KAR 1.350
	921 KAR 2 006
	921 KAR 2:370
	922 KAR 1:400
	922 KAR 2:160
	922 KAR 2:170
	922 KAR 2.210
48 C.F.R.	600 KAR 6 080
49 C.F.R.	502 KAR 10:110
	600 KAR 6.030
	600 KAR 6·040
	907 KAR 1:014
	921 KAR 1:390
	907 KAR 1:479
	921 KAR 1:400
50 C.F.R.	301 KAR 2 226
7 U.S.C.	921 KAR 3:042
	921 KAR 3.035
8 U.S.C.	907 KAR 1:011
	922 KAR 1:350
10 U.S.C.	17 KAR 4 010
15 U.S.C.	921 KAR 1.410
18 U.S.C.	600 KAR 6:040
20 U.S.C.	11 KAR 3.100
	11 KAR 4.080
	11 KAR 18:010
	703 KAR 5:020
21 U.S.C.	902 KAR 55 030
	902 KAR 55 035
23 U.S C.	600 KAR 6.010
	600 KAR 6.040
	600 KAR 6 050
	600 KAR 6.060
	600 KAR 6 065
29 U.S.C.	921 KAR 2:370
	921 KAR 4:118
31 U.S.C.	45 KAR 1:050
38 U.S.C.	907 KAR 1.011
	907 KAR 1:645
41 U.S C.	908 KAR 3:190
42 U.S.C.	401 KAR 42 005
	401 KAR 42:011
	401 KAR 42:060
	401 KAR 42 070
	401 KAR 42:080
	401 KAR 50:010
	401 KAR 51.001
	401 KAR 51:210
	401 KAR 51.220

KRS SECTION	REGULATION
	401 KAR 51:230
	401 KAR 59:001
	401 KAR 61:001
	401 KAR 63:001
	401 KAR 65:001
	702 KAR 6:100
	725 KAR 2:015
	806 KAR 17:555
	902 KAR 20:074
	907 KAR 1:011
	907 KAR 1:026
	907 KAR 1:031
	907 KAR 1:038
	907 KAR 1:145
	907 KAR 1:155
	907 KAR 1:170
	907 KAR 1:450
	907 KAR 1:479
	907 KAR 1:604
	907 KAR 1:626
	907 KAR 1:645
	907 KAR 1:900
	907 KAR 3:125
	907 KAR 3:130
	907 KAR 3:181
	910 KAR 1:260
	921 KAR 1:380
	921 KAR 1:390
	921 KAR 1:400
	921 KAR 1:410
	921 KAR 1:420
	921 KAR 2:006
	921 KAR 2:370
	921 KAR 3.035
	921 KAR 4:118
	922 KAR 1:350
	922 KAR 1:400
	922 KAR 2:210
	922 KAR 2:240
	922 KAR 2:160
	922 KAR 2:170
50 U.S.C.	103 KAR 17:130
Pub. L. 109 - 58	921 KAR 4:118
Pub. L. 109 - 171	907 KAR 1:011
	907 KAR 1.645
	907 KAR 1.650
	921 KAR 1:410
Pub. L. 109 - 58	921 KAR 4:118
2006 Ky. Acts ch. 252	806 KAR 17.540
	806 KAR 17.545
	806 KAR 17.555

SUBJECT INDEX

AGING, OFFICE OF
Services
Kentucky Family Caregiver Program; 910 KAR 1:260

AGRICULTURE, DEPARTMENT OF
Amusement Rides
Operation of amusement rides or amusement attractions; 302 KAR 16:020
Permit for operation of amusement rides or amusement attractions; 302 KAR 16.010
Pest Control, Structural
Commercial structural pest control and fumigation; 302 KAR 29.050
Show and Fair Promotion, Division of
Administration; state aid to local fairs; 301 KAR 15:010
Weights and Measures
Fee schedules for calibrations, adjustments, weights and measures; 302 KAR 85:010

AGRICULTURE EXPERIMENT STATION
Seed
Repeal of 12 KAR 1:115; 12 KAR 1:114

AIR QUALITY, DIVISION FOR
Air Quality, General Administrative Procedures
Definitions for 401 KAR Chapter 50; 401 KAR 50.010
Attainment and Maintenance of the National Ambient Air Quality Standards
CAIR NOx Annual Trading Program; 401 KAR 51:210
CAIR NOx Ozone Season Trading Program; 401 KAR 51:220
CAIR SO_2 Trading Program; 401 KAR 51:230
Definitions for 401 KAR Chapter 51; 401 KAR 51:001
Existing Source Standards
Definitions for 401 KAR Chapter 61; 401 KAR 61:001
General Standards of Performance
Definitions for 401 KAR Chapter 63; 401 KAR 63:001
Mobile Source-Related Emissions
Definitions for 401 KAR Chapter 65; 401 KAR 65:001
New Source Standards
Definitions for 401 KAR Chapter 59; 401 KAR 59:001
Permits, Registrations, and Prohibitory Rules
Definitions for 401 KAR Chapter 52; 401 KAR 52.001

ALCOHOLIC BEVERAGE CONTROL, OFFICE OF
Licensing
Basic application form; 804 KAR 4:400
Brew-on-remises; 804 KAR 4:340
Out-of-state brewer; 804 KAR 4:350
Registration of brands; 804 KAR 4 240
Schedules forms; 804 KAR 4:410
Special temporary licenses; 804 KAR 4.250
Supplemental licenses; extended hours; 804 KAR 4:230
Through transporters; 804 KAR 4:170
Using, "Kentucky", on wine labels prohibited; exceptions; 804 KAR 4 385
Violations of KRS 244.165; procedures for; 804 KAR 4.330
Winery (small farm) application and operations; 804 KAR 4:380
Winery (small farm) wholesaler; 804 KAR 4:420

AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
(See Agriculture, Department of)

AUDITOR OF PUBLIC ACCOUNTS
Audits
County fee officials; 45 KAR 1:040
Fiscal courts; 45 KAR 1:050
Sheriffs' tax settlements; 45 KAR 1.030

BARBERING, BOARD OF
License fees, examination fees, renewal fees, and expiration fees; 201 KAR 14:180

BEER LICENSE
(See Alcoholic Beverage Control, Office of)

CERTIFICATE OF NEED
(See Health Policy, Office of)

CHILD CARE ASSISTANCE PROGRAM
(See Community Based Services, Department for: Day Care)

CHILD SUPPORT
(See Community Based Services, Department for)

CHILD WELFARE
(See Community Based Services, Department for)

COAL MINING
(See Mine Safety and Licensing, and Mine Safety Review Commission)

COMMERCE CABINET
Fish and Wildlife Resources, Department of; KAR Title 301 *(See Fish and Wildlife Resources, Department of)*

COMMUNITY BASED SERVICES, DEPARTMENT FOR
Child Support
Application and interstate process; 921 KAR 1:380
Collection and enforcement; 921 KAR 1:410
Distribution; 921 KAR 1.420
Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400
Paternity establishment; 921 KAR 1:390
Child Welfare
Family preparation; 922 KAR 1:350
Day Care
Child Care Assistance Program; 922 KAR 2:160
Kentucky Early Care and education trainer's credential and training approval; 922 KAR 2:240
STARS for KIDS NOW Program for type I licensed child care centers; 922 KAR 2:170
STARS for KIDS NOW Program for type II licensed and certified family child care providers; 922 KAR 2:210
Energy Assistance Program/Weatherization
Weatherization assistance for low income persons; 921 KAR 4:118
Family Support, Division of
Kentucky Works; technical requirements for; 921 KAR 2:370
K-TAP; technical requirements for the Kentucky Transitional Assistance Program; 921 KAR 2:006\
Food Stamp Program
Certification process; 921 KAR 3:035
Employment and training program; 921 KAR 3:042
Fair hearings; 921 KAR 3.070
Protection and Permanency
Supportive services; 922 KAR 1:400

CONTROLLED SUBSTANCES
(See Inspector General, Office of)

CORRECTIONS, DEPARTMENT OF
Secretary, Office of the

Home incarceration using an approved monitoring device; 501 KAR 6:240
Kentucky State Penitentiary; 501 KAR 6:040
Secured Policies and Procedures; 501 KAR 6.999
Western Kentucky Correctional Complex; 501 KAR 6:130

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF
Concealed Deadly Weapons
Content and conduct of the applicant training course; required; 503 KAR 4 050
Instructor training; required, 503 KAR 4:040

DAY CARE
(See Community Based Services, Department for)

DENTAL HYGIENE
(See Dentistry, Board of)

DENTISTRY, BOARD OF
Application; examination; 201 KAR 8:150
Fee schedule; 201 KAR 9:041
Hygiene application; examination; 201 KAR 8:260

DIETICIANS AND NUTRITIONISTS, KENTUCKY BOARD OF LICENSURE AND CERTIFICATION FOR
Education requirements; continuing for licensees and certificate holders; 201 KAR 33:030

DRIVER TRAINING
(See State Police, Department of)

EDUCATION, BOARD OF
(See Education, Department of)

EDUCATION CABINET
Education, Board of
Education, Department of; KAR Title 701 through 710 *(See Education, Department of)*
Libraries and Archives, Department for; KAR Title 725 *(See Libraries and Archives, Department for)*

EDUCATION, DEPARTMENT OF
Assessment and Accountability
Formula for determining accountability; 703 KAR 5:020
Food Service Programs
Nutrition and health services programs; appeal procedures for; 702 KAR 6:100
Learning Programs Development, Office of
Required program of studies; 704 KAR 3:303
Pupil Transportation
Technical assistance and monitoring; 702 KAR 5:010

EDUCATION PROFESSIONAL STANDARDS BOARD
Administrative Certificates
Career and technical education administrators; 16 KAR 3:080
Assessment
Written exam prerequisites for occupation-based career and technical education teachers; 16 KAR 6:020
Certification; Alternative Routes to
Adjunct instructor certificate; part-time; 16 KAR 9:040
Educator Preparation
Admission, placement, and supervision in student teaching; 16 KAR 5.040
Internship
Kentucky Principal Internship Program; 16 KAR 7:020
Kentucky Teacher Internship Program, 16 KAR 7:010
Teaching Certificates
Certificates; 16 KAR 2:010
Occupation-based career and technical education; 16 KAR 2.020
Probationary certificate for middle school teachers; 16 KAR 2:170
Probationary certificate for teachers of children, birth to primary; 16 KAR 2:140
Probationary certificate for teachers of exceptional children; 16 KAR 2:160
Probationary certificate for teachers of technology education; 16 KAR 2:150

ELECTIONS, STATE BOARD OF
Forms and Procedures
Absentee ballot applications submitted to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail; 31 KAR 4:140

EMBALMERS AND FUNERAL DIRECTORS, BOARD OF
Funeral establishment criteria; 201 KAR 15:110

ENGINEERS AND LAND SURVEYORS, KENTUCKY STATE BOARD OF LICENSURE FOR PROFESSIONAL
Board; compensation of members; 201 KAR 18:170
Professional development; continuing; 201 KAR 18:192

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Alcoholic Beverage Control, Office of; KAR Title 804 *(See Alcoholic Beverage Control, Office of)*
Environmental Protection, Department for
Air Quality, Division for; 401 KAR Chapter 50 through 100 *(See Air Quality, Division for)*
Waste Management, Division of; 401 KAR Chapter 30 through 49 *(See Waste Management, Division of)*
Water, Division of; 401 KAR Chapter 4 through 8 *(See Water, Division of)*
Labor, Department of; KAR Title 803 *(See Labor, Department of)*
Mine Safety Review Commission; KAR Title 825 *(See Mine Safety Review Commission)*
Natural Resources, Department for
Mine Safety and Licensing; KAR Title 805 *(See Mine Safety and Licensing)*
Public Protection, Department for
Insurance, Office of; KAR Title 806 *(See Insurance, Office of)*
Kentucky Horse Racing Authority; KAR Title 810 and 811 *(See Kentucky Horse Racing Authority)*

FINANCE AND ADMINISTRATION CABINET
Revenue, Department of; KAR Title 103 *(See Revenue, Department of)*
School Facilities Construction Commission; KAR Title 750 *(See School Facilities Construction Commission)*
Secretary, Office of the
Property
Repeal of 200 KAR 6:045; 200 KAR 6.046E

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Land Between the Lakes provisions; 301 KAR 1:031
Mussel shell harvesting; 301 KAR 1:085
Repeal of 301 KAR 1:030; 301 KAR 1:032
Special commercial fishing permit; 301 KAR 1:140
Wildlife rehabilitation permit; 301 KAR 2:075
Game
Cervids; captive; holding and intrastate transportation; 301 KAR 2.083
Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225
Feeding of wildlife, 301 KAR 2:015

Hunting and trapping seasons and limits for furbearers and small game; 301 KAR 2.251
Waterfowl, moorhen, and gallinule; youth hunting seasons; 301 KAR 2:226
Hunting and Fishing
License, tag, and permit fees; 301 KAR 3:022
Special commission permits; 301 KAR 3:100
Wildlife Management Areas; public use of; 301 KAR 3:010
Licensing
Electronic purchasing of licenses; 301 KAR 5:050
Water Patrol
Boating safety equipment; 301 KAR 6 020

FISHING
(See Fish and Wildlife Resources, Department of)

FOOD STAMP PROGRAM
(See Community Based Services, Department for)

FUNERAL DIRECTORS
(See Embalmers and Funeral Directors, Board of)

GAME
(See Fish and Wildlife Resources, Department of)

GENERAL GOVERNMENT CABINET
Agriculture, Department of; KAR Title 302 *(See Agriculture, Department of)*
Auditor of Public Accounts; KAR Title 45 *(See Auditor of Public Accounts)*
Barbering, Board of; 201 KAR Chapter 14 *(See Barbering, Board of)*
Dentistry, Board of; 201 KAR Chapter 8 *(See Dentistry, Board of)*
Dieticians and Nutritionists, Kentucky Board of Licensure and Certification for; 201 KAR Chapter 33 *(See Dieticians and Nutritionists, Kentucky Board of Licensure and Certification for)*
Embalmers and Funeral Directors, Board of; 201 KAR Chapter 15 *(See Embalmers and Funeral Directors, Board of)*
Engineers and Land Surveyors, Kentucky State Board of Licensure for Professional; 201 KAR Chapter 18 *(See Engineers and Land Surveyors, Kentucky State Board of Licensure for Professional)*
Medical Licensure, Board of; 201 KAR Chapter 9 *(See Medical Licensure, Board of)*
Nursing, Board of; 201 KAR Chapter 20 *(See Nursing, Board of)*
Occupational Therapy, Board of Licensure for; 201 KAR Chapter 28 *(See Occupational Therapy, Board of Licensure for)*
Physical Therapy, Board of; 201 KAR Chapter 22 *(See Physical Therapy, Board of)*
Real Estate Commission; 201 KAR Chapter 11 *(See Real Estate Commission)*

GOVERNOR'S OFFICE
Veterans' Affairs, Department of
State Veterans' Nursing Homes
Calculation of resident charges; 17 KAR 3.010
Maximum charge for room and care; 17 KAR 3.020
Veterans' Service Organization Burial Honor Guard Program
Program; 17 KAR 4.010

HEALTH AND FAMILY SERVICES, CABINET FOR
Community Based Services, Department for; KAR Title 921 and 922 *(See Community Based Services, Department for)*
Health Policy, Office of; KAR Title 900 *(See Health Policy, Office of)*
Human Support Services; Aging, Office of; KAR Title 910 *(See Aging, Office of)*
Human Support Services; Women's Physical and Mental Health, Division of; KAR Title 920 *(See Women's Physical and Mental Health, Division of)*
Inspector General, Office of; *(See Inspector General, Office of)*
Medicaid Services, Department for; KAR Title 907 *(See Medicaid Services, Department for)*
Mental Health and Mental Retardation Services; KAR Title 908 *(See Mental Health and Mental Retardation Services, Department for)*
Public Health, Department for; Title 902 KAR *(See Public Health, Department for)*

HEALTH CHOICES, KENTUCKY
(See Medicaid Services, Department for: Medicaid Services)

HEALTH POLICY, OFFICE OF
Certificate of Need
Expenditure minimums; 900 KAR 6:030

HORSE RACING
(See Kentucky Horse Racing Authority)

HUNTING
(See Fish and Wildlife Resources, Department of)

INCOME TAX
(See Revenue, Department of)

INSPECTOR GENERAL, OFFICE OF
Controlled Substances
Schedule IV substances; 902 KAR 55:030
Schedule V substances; 902 KAR 55.035

INSURANCE, OFFICE OF
Health Insurance Contracts
ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545
ICARE Program high-cost conditions; 806 KAR 17.540
ICARE Program requirements; 806 KAR 555
Repeal of 806 KAR 17:110, 17:120, and 17:205; 806 KAR 17:021
Standard health benefit plan; 806 KAR 17:180
Health Insurance, Group and Blanket
Repeal of 806 KAR 18:060

INVESTIGATIONS, OFFICE OF
Abuse Investigation
Investigations office; 500 KAR 13:020

JUSTICE AND PUBLIC SAFETY CABINET
Corrections, Department of; KAR Title 501 *(See Corrections, Department of)*
Criminal Justice Training, Department of; KAR Title 503 *(See Criminal Justice Training, Department of)*
Investigations, Office of; KAR Title 500 *(See Investigations, Office of)*
Juvenile Justice, Department of; KAR Title 505 *(See Juvenile Justice, Department of)*
State Police, Department of, KAR Title 502 *(See State Police, Department of)*

JUVENILE JUSTICE, DEPARTMENT OF
Child Welfare
Treatment program for juvenile sexual offenders, 505 KAR 1:160

KENTUCKY DEPARTMENT OF AGRICULTURE
(See Agriculture, Department of)

KENTUCKY FAMILY CAREGIVER PROGRAM
(See Aging, Office of: Services)

KENTUCKY HEALTH CHOICES
(See Medicaid Services, Department for: Medicaid Services)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Early Childhood Development Scholarship Program
Early Childhood Development Scholarship Program applicant selection process; 11 KAR 16:010
Kentucky Higher Education Assistance Authority
Student aid applications; 11 KAR 4 080
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3.100
KHEAA Grant Programs
CAP grant award determination procedure; 11 KAR 5:145
KTG award determination procedure; 11 KAR 5:140
Student application; 11 KAR 5:130
KHEAA Work-Study Program
KHEAA Work-Study Program; 11 KAR 6:010
Robert C. Byrd Honors Scholarship Program
Robert C. Byrd Honors Scholarship Program; 11 KAR 18 010
Teacher Scholarship Loan Program
Teacher scholarships; 11 KAR 8.030

KENTUCKY HORSE RACING AUTHORITY
Harness Racing
Association with undesirables prohibited; 811 KAR 1:160
Associations; 811 KAR 1:010
Claiming races; 811 KAR 1:035
Conduct of racing; 811 KAR 1:085
County fairs; 811 KAR 1:220
Declaration to start; drawing horses; 811 KAR 1:055
Definitions; 811 KAR 1:005
Disciplinary measures and penalties; 811 KAR 1:095
Eligibility and classification; 811 KAR 1.030
Entries; 811 KAR 1:045
Entries and starters; split races; 811 KAR 1:050
Identification cards and badges; 811 KAR 1:135
Kentucky Standardbred Development Fund; 811 KAR 1:215
Medication; testing procedures; prohibited practices; 811 KAR 1:090
Name; farm or stable; 811 KAR 1:025
Officials; race; 811 KAR 1:015
Placing; money distribution; 811 KAR 1:080
Postponement; rescheduling, purses; 811 KAR 1:060
Postponements; decision on; 811 KAR 1:155
Post time; entry number; 811 KAR 1:140
Protests; 811 KAR 1:100
Races per program; number; 811 KAR 1:145
Repeal of 811 KAR 1:165, 1:170, 1:180, and 1:190; 811 KAR 1:171
Registration and identification of horse, 811 KAR 1.020
Review and appeal; 811 KAR 1:105
Rules, racing and track; 811 KAR 1:075
Security; persons permitted on licensed premises; 811 KAR 1:130
Stakes and futurities; 811 KAR 1:040
Starting; 811 KAR 1:065
Substance abuse by Authority employees and licensees; 811 KAR 1:225
Timing and records; 811 KAR 1:110
Track deductions from wagers; 811 KAR 1:195
Track inspection; 811 KAR 1:175
Thoroughbred Racing
Jockeys and apprentices; 810 KAR 1:009

KENTUCKY INDUSTRIAL DEVELOPMENT ACT
(See Revenue, Department of: Income Tax, Withholding)

KENTUCKY INDUSTRIAL REVITALIZATION ACT
(See Revenue, Department of: Income Tax; Withholding)

KENTUCKY JOBS DEVELOPMENT ACT
(See Revenue, Department of: Income Tax; Withholding)

KENTUCKY PRINCIPAL INTERNSHIP PROGRAM
(See Education Professional Standards Board: Internship)

KENTUCKY REAL ESTATE COMMISSION
(See Real Estate Commission)

KENTUCKY RURAL ECONOMIC DEVELOPMENT ACT
(See Revenue, Department of: Income Tax; Withholding)

KENTUCKY STATE PENITENTIARY
(See Corrections, Department of: Secretary, Office of the)

KENTUCKY TEACHER INTERNSHIP PROGRAM
(See Education Professional Standards Board: Internship)

KENTUCKY TRANSITIONAL ASSISTANCE PROGRAM (K-TAP)
(See Community Based Services, Department for: Family Support, Division of)

KENTUCKY WORKS
(See Community Based Services, Department for: Family Support, Division of)

KHEAA
(See Kentucky Higher Education Assistance Authority)

K-TAP (KENTUCKY TRANSITIONAL ASSISTANCE PROGRAM
(See Community Based Services, Department for. Family Support, Division of)

LABOR, DEPARTMENT OF
Occupational Safety and Health
Agriculture standards; 803 KAR 2:600
Environmental controls; 803 KAR 2:403
Maritime employment; 803 KAR 2:500
Rollover protective structures; overhead protection; 803 KAR 2:422
Steel erection; 803 KAR 2:417
Toxic and hazardous substances; 803 KAR 2:425
Workers' Claims, Office of
Procedure for adjustment of claims; 803 KAR 25:010

LIBRARIES AND ARCHIVES, DEPARTMENT FOR
Libraries
Public library facilities construction; 725 KAR 2:015

LIQUOR LICENSE
(See Alcoholic Beverage Control, Office of)

MEDICAID SERVICES, DEPARTMENT FOR
Medicaid Services
Community living services supports for an individual with mental retardation or a developmental disability; 907 KAR 1:145
Community living services supports for an individual with mental retardation or a developmental disability; payments for; 907 KAR 1:155
Cost-sharing; recipient; 907 KAR 1:604
Dental services; 907 KAR 1:026
Dental services reimbursement; 907 KAR 1:626
Eligibility technical requirements; 907 KAR 1:011
Equipment; durable medical; covered benefits and reimbursement; 907 KAR 1.479

Hearing and vision program services; 907 KAR 1:038
Home and community based waiver services; 907 KAR 1:160
Home and community based waiver services reimbursement; 907 KAR 1:170
Home health services payments; 907 KAR 1:031
Inpatient hospital services; 907 KAR 1:012
Kentucky Health Choices benefit packages; 907 KAR 1:900
Nurse aide training criteria and registry; 907 KAR 1:450
Organ transplants coverage and payments; 907 KAR 1:350
Outpatient hospital services; 907 KAR 1:014
Resource standards; 907 KAR 1.645
Trust and transferred resource requirements; 907 KAR 1:650
Payment and Services
Chiropractic services and reimbursement; 907 KAR 3:125
Instate inpatient hospital special reimbursement increase; 907 KAR 3:181
Medical necessity and clinically appropriate determination basis; 907 KAR 3:130
Physicians' services; 907 KAR 3.005
Physicians' services; reimbursement for; 907 KAR 3.010
Sales and Use Tax; Miscellaneous Retail Transactions
Collection of sales tax on certain motor vehicle sales; 103 KAR 28:150

MEDICAL LICENSURE, BOARD OF
Fee schedule regarding athletic trainers; 201 KAR 9:307
Fee schedule regarding acupuncturists; 201 KAR 9:450
Fee schedule regarding physician assistants; 201 KAR 9:084
Fee schedule regarding surgical assistants; 201 KAR 9:400

MENTAL HEALTH AND MENTAL RETARDATION SERVICES, DEPARTMENT FOR
Institutional Care
Drug testing procedures at a state-operated facility for persons with mental illness or mental retardation; 908 KAR 3:190
Per diem rate pursuant to KRS 210.710 - 760

MINE SAFETY AND LICENSING
Sanctions and Penalties
Criteria for the imposition and enforcement of sanctions against licensed premises; 805 KAR 8:060

MINE SAFETY REVIEW COMMISSION
Administrative hearings procedures; 825 KAR 1:020

NURSING, BOARD OF
Advanced registered nurse practitioner controlled substances prescriptions; 201 KAR 20.048
Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization; 201 KAR 20:056
Advanced registered nurse practitioners; scope and standards of practice; 201 KAR 20:057
Alternative program; 201 KAR 20 450
Complaints, investigation and disposition of; 201 KAR 20:161
Dialysis technician credentialing requirements and training program standards; 201 KAR 20:470
Faculty for prelicensure registered nurse and practical nurse programs; 201 KAR 20:310
Licensure by endorsement; 201 KAR 20:110
Licensure by examination; 201 KAR 20:070
Licensure compact, 201 KAR 20.500
Sexual Assault Nurse Examiner Program standards and credential requirements; 201 KAR 20:411

OCCUPATIONAL THERAPY, BOARD OF LICENSURE FOR
Per diem of board members; 201 KAR 28:220
Renewals; 201 KAR 28.090

PENITENTIARY, KENTUCKY STATE
(See Corrections, Department of: Secretary, Office of the)

PEST CONTROL, STRUCTURAL
(See Agriculture, Department of)

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND
(See Waste Management, Division of: Underground Storage Tanks)

PHYSICAL THERAPY, BOARD OF
Foreign-educated physical therapists; 201 KAR 22:070
Impaired physical therapy practitioners committee; funding of; 201 KAR 22:140
Renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant; 201 KAR 22:040

POLICE, STATE
(See State Police, Department of)

PRISONS
(See Corrections, Department of)

PUBLIC HEALTH, DEPARTMENT FOR
Epidemiology; Vital Statistics
Delayed birth registration; 901 KAR 5 020
Health Services and Facilities
Comprehensive physical rehabilitation hospital services; 902 KAR 20:240
Outpatient health care center; operation and services; 902 KAR 20.074
Paid feeding assistants; 902 KAR 20:390

REAL ESTATE COMMISSION
Agency disclosure requirements; 201 KAR 11:400
Insurance requirements; errors and omissions; 201 KAR 11:220
Seller's disclosure of property conditions form; 201 KAR 11:350

RETIREMENT SYSTEM, TEACHERS'
General Rules
Application for retirement; 102 KAR 1.070
Fractional service year for members initially employed on a full-time basis; 102 KAR 1:038

REVENUE, DEPARTMENT OF
Ad Valorem Tax; State Assessment
Apportioned vehicles; 103 KAR 8:110
Corporation License Tax
Policies and circulars; 103 KAR 20:035
General Administration
Policies and circulars; 103 KAR 1:092
Taxation of federal and certain nonfederal obligations; 103 KAR 1:130
Income Tax; Corporations
Apportionment; property factor; 103 KAR 16:290
Attachment for corporate officer information; Form 720S and 765, Schedule Q; 103 KAR 16:390
Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income; 103 KAR 16.360
Finance lease property; 103 KAR 16:380
Policies and circulars; 103 KAR 16:352
Treatment of foreign sales corporations and domestic international sales corporations; 103 KAR 16:370
Income Tax; Individual
Estimated tax penalty; 103 KAR 17:120
Military personnel; nonresidents; 103 KAR 17:130
Reciprocity; nonresidents; 103 KAR 17:140

Income Tax; Withholding
Circulars; 103 KAR 18:172
Kentucky economic opportunity zone job development assessment fee; 103 KAR 18 220
Kentucky Industrial Development Act job development assessment fee; 103 KAR 18:200
Kentucky Industrial Revitalization Act Job revitalization assessment fees; 103 KAR 18:180
Kentucky Jobs Development Act service and technology job creation assessment fee; 103 KAR 18:210
Kentucky Rural Economic Development Act job development assessment fee; 103 KAR 18:190

SCHEDULE IV SUBSTANCES
(See Inspector General, Office of: Controlled Substances)

SCHEDULE V SUBSTANCES
(See Inspector General, Office of: Controlled Substances)

SCHOOL FACILITIES CONSTRUCTION COMMISSION
Procedures
Commission procedures; 750 KAR 1:010

SEXUAL ASSAULT NURSE EXAMINER PROGRAM
(See Nursing, Board of)

SMALL OWNERS TANK REMOVAL ACCOUNT
(See Waste Management, Division of: Underground Storage Tanks)

STARS FOR KIDS NOW PROGRAM
(See Community Based Services, Department for: Day Care)

STATE PENITENTIARY, KENTUCKY
(See Corrections, Department of: Secretary, Office of the)

STATE POLICE, DEPARTMENT OF
Driver Training
Third-Party CDL skills test examiner standards; 502 KAR 10:110

TANK REMOVAL, UNDERGROUND STORAGE
(See Waste Management, Division of: Underground Storage Tanks)

TAXATION
(See Revenue, Department of)

TEACHERS' RETIREMENT SYSTEM
(See Retirement System, Teachers')

TRANSPORTATION CABINET
Professional Engineering and Related Services
Contracting; 600 KAR 6:070
Definitions; 600 KAR 6 010
Federal requirements; 600 KAR 6:030
Financial records and audits of firms; 600 KAR 6.080
Pooling of professional engineering or related services; 600 KAR 6 065
Prequalification of firms; 600 KAR 6 040
Procurement bulletins and advertisement for selection of professional firms; 600 KAR 6.050
Service Selection Committee; 600 KAR 6:060
Property Acquisition and Uniform Relocation
Utility and rail facilities relocation or reconstruction; recordkeeping and audit requirements; 600 KAR 3:030

TREASURY, DEPARTMENT OF THE
State Treasury
Reports to be filed by holders of unclaimed property; 20 KAR 1:080

UNDERGROUND STORAGE TANKS
(See Waste Management, Division of)

UNDERTAKERS
(See Embalmers and Funeral Directors, Board of)

VETERANS' AFFAIRS, DEPARTMENT OF
(See Governor's Office)

VETERANS' SERVICE ORGANIZATION BURIAL HONOR GUARD PROGRAM
(See Governor's Office: Veterans' Affairs, Department of)

WASTE MANAGEMENT, DIVISION OF
Underground Storage Tanks
Certification of contracting companies; 401 KAR 42:316
Classification of UST systems containing petroleum and listing of associated cleanup levels; 401 KAR 42:080
Definitions; 401 KAR 42:005
Out-of-service, temporary and permanent closure, and change-in-service UST systems; 401 KAR 42:070
Petroleum Storage Tank Environmental Assurance Fund reimbursement procedures; 401 KAR 42:250
Program scope (UST); 401 KAR 42 011
Systems design, construction, installation, and registration; 401 KAR 42:020
Ranking system; 401 KAR 42:290
Release detection; UST system; 401 KAR 42.040
Release response and corrective action for UST systems containing petroleum or hazardous substances; 401 KAR 42.060
Small Owners Tank Removal Account; 401 KAR 42:330

WATER, DIVISION OF
Water Resources
Stream construction criteria; 401 KAR 4:060

WINERY LICENSE
(See Alcoholic Beverage Control, Office of)

WOMEN'S PHYSICAL AND MENTAL HEALTH, DIVISION OF
Breast Cancer Research and Education Grant Program; 920 KAR 3.010

WORKERS' CLAIMS, OFFICE OF
(See Labor, Department of)