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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet September 11, 2007 at 10 a.m. in
room 149 Capitol Annex. See tentative agenda on pages 521-
523 of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2007 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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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.
COMPILER'S NOTE: The following administrative regulation, 302 KAR 20:065, is being reprinted to show its full text. As originally printed in the August 2007 Register, Section 1 was missing text from subsections (2)(b), (3), and (3)(a).

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(AMENDMENTS)


RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 245.295, 257.030, 257.315, 257.380

NEGOTIABILITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals [livestock]. KRS 257.030(2) authorizes the board to establish necessary quarantines and other measures to control the movement of animals [livestock] into, through, or within Kentucky. This administrative regulation establishes health requirements for the sale, movement, and exhibition of Kentucky animals within [livestock in] Kentucky. [Sale and exhibition requirements for out-of-state livestock are established in 302 KAR 20:040, Entry into Kentucky.]

Section 1. General Requirements. (1) All animals moving within Kentucky shall be subject to the requirements provided in 302 KAR 20:020.
(2)(a) All animals offered for sale or exhibition in the Commonwealth shall be accompanied by a Certificate of Veterinary Inspection, CVI, or other official movement document except for exemptions listed under each species section. Examples of official movement documents are a waybill with a permit number and a federal movement form.

(a) A CVI for sale purposes shall be valid for thirty (30) days from the date of issuance.
(b) A CVI for sale purposes shall have a valid destination and be void upon arrival at stated destination, unless a CVI reassignment form for movement from the sale premises to a new destination is executed and attached to the original CVI.
(3) All animals entering venues for exhibition purposes where confining of animals occurs shall be accompanied by a CVI.
(a) A CVI for Kentucky origin animals for purposes other than sale shall be valid for each individual species.
(b) A CVI written for exhibition purposes shall be void upon change of ownership of the listed animals.
(4) All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R.
(5) No animal that originated from a quarantined area or quarantined herd shall be transported interstate within Kentucky unless permitted by OSV on VS Form 1-27 or other written agreement from OSV, unless otherwise provided in 302 KAR 20:070 and this administrative regulation.
(b) A Certificate of Veterinary Inspection shall be void:
1. 150 days after issuance for purposes of exhibition; and
2. Thirty (30) days after issuance for purposes of sale.
(c) All required testing shall be conducted by a state and federally approved laboratory as defined in 9 C.F.R.70.1.

Section 2. Cattle and other Bovine Species. (1) General requirements.
(a) Cattle moving intrastate for sale except as noted in paragraph (b) of this subsection, change of ownership or exhibition purposes shall meet requirements in subsections (3) and (3)(b) of this section.
(b) Cattle moving directly to a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements in subsections (3) and (4) of this section.
(c) Certificate of Veterinary Inspection.

(a) All cattle moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020, Section 1(3)(a).
(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.
(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.
(3) Specific diseases.
(a) If animals are from an accredited or certified herd, the Certificate of Veterinary Inspection shall document the accreditation and certification number with the date of the last herd test for tuberculosis and brucellosis.
(b) Cattle infected with wart, ringworm, or any other contagious, infectious, or communicable disease shall not be eligible for sale or exhibition.
(3) Brucellosis. Testing.
(a) Sale and exhibition. A test shall not be required for sale or exhibition if one of the following applies:
1. Kentucky has class free status.
2. The animals are moving from a brucellosis certified herd.
3. The animals are moving from a brucellosis certified herd. Hard number and last test date shall be recorded on CVI.
(b) The Certificate of Veterinary Inspection shall document the official animal identification.
(3) Tuberculosis. Testing.
(a) Sale and exhibition. A test shall not be required for sale or exhibition if one of the following applies:
1. Kentucky has class free status.
2. The animals are from a tuberculin accredited herd. Hard number and last test date shall be recorded on CVI.
(c) Cattle infected with warts, ringworm, or any other communicable disease shall not be eligible for exhibition.
(4) The seller's name and address and premises of origin or PIN shall be provided for cattle moving to a state-federal approved stockyard or directly to a recognized slaughtering center.

[Section 3. Performance Bull Testing Program. All animals shall be accompanied by a Certificate of Veterinary Inspection.]

Section 3. Horses and Other Equine Species. (1) General requirements.
(a) Equine moving intrastate for sale, racing, change of ownership or exhibition shall be examined in the barn or into a public stable, feedlot or showground except as noted in paragraphs (b) and (c) of this subdivision shall meet requirements in subsections (2) and (3) of this section.
(b) Equine moving directly to a state-approved horse sale shall meet requirements in subsection (4) of this section.
(c) Equine moving farm to farm with no change of ownership or to a veterinary facility shall not be required to meet the requirements of subsections (2) and (3) of this section.
(d) Certificate of Veterinary Inspection or Equine Interstate Event Permit.
(a) All equine moving intrastate shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020, Section 1(3)(c).
(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.
(c) A CVI for intrastate exhibition shall be valid for the duration of the EIA test certificate not to exceed one (1) year.
(d) An Equine Interstate Event Permit issued within the previous twelve (12) months shall be accepted in lieu of a CVI and EIA test report for exhibition purposes.
(e) A CVI or an Equine Interstate Event Permit shall be void upon change of ownership [ Specific Diseases].
(f) Equine Infectious Anemia.
(a) Horses and other equidae shall be negative to an USDA approved test, pursuant to 9 C.F.R. 75.4, for EIA within the previous twelve (12) months.
(b) Unweaned foals accompanied by their dam are exempt from subsection (3)(a).
(4) Approved Kentucky horse sales. (a) Horses and other equidae may move directly to an approved Kentucky horse sale without a CVI or negative EIA test certificate.

(b) Approved Kentucky sales shall meet the requirements of 302 KAR 20-260.

(c) All horses and other equidae presented without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller’s expense.

1. Sale—All horses and other equidae, except unwaned foals accompanied by their dam, are offered for sale, traded, given away, leased, or moved for the purpose of change of ownership shall be negative to an Agar-Cel-luminometric (AGID) test or other USDA approved test, pursuant to 9 C.F.R. 75.4, for equine infectious anemia within the previous twelve (12) months. Equine which are offered for sale at a state federal approved stockyard without proof of a negative test for Equine Infectious Anemia (EIA) within the previous twelve (12) months shall be have a blood sample drawn at the stockyard by the approved market veterinarian at the seller’s expense.

2. Exemption—All horses and other equidae, except unwaned foals—accompanied by their dam, are offered for exhibition including entry into fairs, parades, livestock shows, racetracks, and racing, shall be negative to an AGID test or other USDA approved test for equine infectious anemia within the previous twelve (12) months.


(a) Swine moving intrastate for sale, change of ownership or exhibition shall meet requirements in subsections (2) and (3) of this section.

(b) Swine moving directly to a state or federal approved stockyard or a recognized slaughtering center shall meet the requirements of subsections (3) and (4) of this section.

(c) Swine that shall not be moved for any purpose, except under supervision of the USOS or the USDA APHIS VS:

1. Garbage fed swine;

2. Wild, captive wild, or feral swine; Sue scrofa, per definition, including Russian wild boars and Eurasian wild boars.

(2) Certificate of Veterinary Inspection.

(a) All swine moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) All swine shall have an official permanent identification.

(b) If swine originate from a vaccinated and qualified herd, the Certificate of Veterinary Inspection shall document the herd identification number and the date of the last test for brucellosis and pseudorabies.

[c] Brucellosis. Testing [A test] shall not be required for sale or exhibition if one (1) of the following apply:

1. Kentucky is a class free state;

2. The animal is from a validated brucellosis free herd and the validation number and last test date are recorded on CVI.

[c][d] Pseudorabies. Testing [Sale or exhibition. A test] shall not be required for sale or exhibition if Kentucky maintains a Stage V Pseudorabies status.

(4) Swine moving to a Kentucky state or federal approved stockyard or directly to a recognized slaughtering center shall have the following:

1. Official identification; and

2. The seller’s name and address and premises of origin address or PIN. [The State Veterinarian may require an official pseudorabies blood test if the animal’s state and premises of origin cannot be documented.

(4) Tuberculosis. For sale and exhibition. A test shall not be required for sale or exhibition.

Section 5.1[6] Sheep and Other Ovine Species. (1) General requirements.

(a) Sheep and lambs for sale, except as noted in paragraph (b) of this subsection, exhibition, breeding or feeding purposes shall meet requirements in subsections (2) and (3) of this section.

(b) Sheep moved directly to a state or federal approved stockyard, graded sale or telemarketing sale or a recognized slaughtering center shall meet requirements in subsections (3) and (4) of this section.

(c) Sheep that require a CVI for movement shall be identified with an official USDA Scrape Program Identification tag or other official identification method.

(2) Certificate of Veterinary Inspection

(a) All sheep and lambs moving intrastate for sale, exhibition, breeding or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) All sheep and lambs shall be officially identified by ear or flank tattoo, official ear tag or by microchip and entered on a Certificate of Veterinary Inspection. For sale and exhibition in Kentucky, all breeding sheep shall originate from a certified state breeding and movement program certified by the USDA Voluntary Scrape flock Certification Program in 9 C.F.R. 75.1, and shall be identified with an official USDA-Scrape Program identification tag. Market lambs under the age of eighteen (18) months shall be identified as documented on the Certificate of Veterinary Inspection.

(b) Sheep and lambs infected with any contagious, infectious or communicable diseases shall not be eligible for sale or exhibition.

(c) Scrape.

(d) Sale.

(e) Sheep and lambs shall not be consigned that originate from known trace, source or infected scrape flocks as determined by the (a flock listed as a scrape-affected or surveillance flock) by USDA APHIS VS [Animal Plant Health Inspection Service, Veterinary Services] in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the USDA OSV.

(2) Sheep enrolled in the USDA Voluntary Scrape Flock Certification Program shall be eligible for sale. A Certificate of Veterinary Inspection shall document that the flock is in compliance with the USDA Voluntary Scrape Flock Certification Program.

(b) Exhibition. Flocks enrolled in the USDA Voluntary Scrape Flock Certification Program shall be eligible for exhibition. A Certificate of Veterinary Inspection shall document that the flock is in compliance with the USDA Voluntary Scrape Flock Certification Program.

(3) Scabies. Sheep effected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for sale or exhibition.

(c) Sheep and lambs for breeding and feeding purposes consigned from a farm, ranch, or feedlot premises shall be accompanied by a Certificate of Veterinary Inspection indicating the sheep and lambs originated directly and immediately from an official encephalitis-free area.

(4) Sore mouth (Contagious Ecthyma). Any sheep or lambs showing lesions of contagious ecthyma (sore mouth) shall not be eligible for exhibition or sale.

(4) Other movements.

(a) Sheep and lambs moving to state or federal approved stockyards, graded sales, telemarketing sales or directly to a recognized slaughtering center shall:

1. Be identified in accordance with 9 C.F.R. Part 79;

2. The seller’s name and address and premises of origin address or PIN.

Section 6.7[7] Goats and Other Caprine Species. (1) General requirements.

(a) Goats moving for sale, except as noted in paragraph (b) of this subsection, exhibition, breeding or feeding purposes shall meet requirements in subsections (2) and (3) of this section.

(b) Goats moving directly to a state or federal approved stock-
yard, graded sale or telemarketing sale or a recognized slaughtering center shall meet requirements in subsections (3) and (4) of this section.

(c) Goats that require a CVI for movement shall be identified with an official USDA Scrape program identification tag or other official identification method.

(2) Certificate of Veterinary Inspection.

(a) All goats moving intrastate for sale, exhibition, breeding or feed purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20-020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(d) Specific diseases.

(a) Scrapie. Goats that originate from known trace, source or infected Scrape flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 78 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Brucellosis. Any goat that originates from a premises that has been infected with or exposed to B. melitensis or other Brucella spp. within the previous twelve (12) months shall be negative to a Brucella test within thirty (30) days for sale or exhibition.

(c) Tuberculosis. Testing shall not be required for sale or exhibition if Kentucky has class free status.

(d) Goats infected with a communicable disease shall not be eligible for sale or exhibition.

(4) Other movements.

(a) Goats moving to state-federal approved stockyards, graded sales, telemarketing sales or directly to a recognized slaughtering center shall:

1. Be identified in accordance with 9 C.F.R. Part 79.
2. The seller’s name and address and premises of origin address or PIN. (1) Scabies—All goats shall originate from a scabies-free area.

(b) Scrape. Goats from a herd under surveillance for scrapie that are known to have been exposed to or that are prophy-laxis shall not be eligible for sale or exhibition.

(c) Brucellosis. Sale or exhibition. Testing shall not be required for sale or exhibition.

(d) Tuberculosis. Sale or exhibition. Testing shall not be required for sale or exhibition.

Section 7.9[J]—Poultry or Farm Raised Upland Game Birds (1) General requirements.

(a) Birds five (5) months and older for sale or exhibition purposes shall meet the requirements in subsections (2) and (3) of this section.

(b) Chicks and hatching eggs for sale shall meet the requirements in subsections (2) and (3).

(c) Birds moving to an approved slaughter facility or between a commercial company’s facilities shall meet requirements in subsection (4).

(2) Certificate of Veterinary Inspection.

(a) A CVI, Non-NPIP flock Report or appropriate NPPIP certificate with the flock number shall be required for movement and exhibition.

(b) A CVI or Non-NPIP flock Report will be valid for the remainder of the ninety (90) day S. pulverum test period for intrastate exhibition. An NPPIP certificate will be valid for one (1) year from the date issued for intrastate exhibition.

(c) Official individual identification, leg or wing band, shall be recorded on the CVI or Non-NPIP flock Report.

(d) Poultry shall be individually identified with an official leg or wing band. The official leg or wing band number shall be recorded on a Certificate of Veterinary Inspection which shall accompany poultry when presented for sale or exhibition.

(3) Salmonella Pullorum.

(a) Birds five (5) months of age and older shall be negative to an official Salmonella pullorum test within ninety (90) days of origin or a NPPIP flock. The name of the laboratory conducting the test and test results or the NPPIP flock number shall be recorded on a CVI.

(b) Chicks and hatching eggs shall originate from a flock that satisfies the requirements of KRS 257.400. *

(4) Other movements.

(a) Commercial poultry moving between company facilities shall maintain a log book or possess a way bill stating the origination of the birds and intended destination with the flock NPPIP number.

(b) Birds going direct to slaughter must provide the name and address or premises of origin.

Section 8. Ratties. (1) General requirements.

(a) Ratties moving for sale or exhibition purposes shall meet requirements in subsections (2) and (3) of this section.

(b) A permit number shall be obtained from OSV prior to the sale of ratties in Kentucky. This permit number shall be recorded on the CVI accompanying the animals.

(c) All ratties shall have a permanent official identification.

(d) Any rattie with evidence of a communicable disease shall not be eligible for sale or exhibition.

(2) Certificate of Veterinary Inspection.

(a) All ratties moving intrastate for sale or exhibition shall be accompanied by a valid CVI or NPPIP certificate that shall meet the criteria in 302 KAR 20-020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for ninety (90) days.

(d) Specific diseases.

(1) Avian influenza. Ratties shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP AI Clean flock.

(2) Salmonella pullorum. Ratties shall be negative to an official test as defined by 9 C.F.R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP flock.


(a) All dogs and cats for exhibition shall be accompanied by a CVI that shall meet the criteria in 302 KAR 20-020, Section 1(3)(c).

(b) CVI shall be valid for the duration of the rabies vaccination not to exceed one (1) year.

(c) All dogs, cats and ferrets over four (4) months of age shall be vaccinated against rabies per the "Compendium of Animal Rabies Vaccines" prepared by the National Association of State Public Health Veterinarians, Inc. (Sale and exhibition. A negative agglutination test shall be required for all poultry within thirty (30) days prior to the date of sale within 150 days prior to the date of exhibition. A Certificate of Veterinary Inspection shall accompany poultry when presented for sale and exhibition and shall document the laboratory which conducted the test and the test date.

(d) Chicks and hatching eggs shall originate from a flock that satisfies the requirements of KRS 257.400.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity--by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, Inc., qualifies a dog if it is one (1) year of age when vaccinated, provided, chew or perform dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.

(2) All cattle shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age and older, not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Kentucky Cabinet for Health Services, Department for Public Health.
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Section 10 – Rattles (Otiech, Emu, Rheas, Cassowary, Kiwi, etc.): (1) General requirements:
(a) A permit number shall be obtained prior to the sale of any rattles-in-Kenton by calling (502) 656-3206 weekdays between the hours of 8 a.m. - 4:30 p.m. The permit number shall appear on the Certificate of Veterinary Inspection accompanying the animals.
(b) All rattles shall have a permanent official identification approved by a state federal agency.
(c) Any rattle with evidence of a contagious, infectious, or communicable disease shall not be eligible for sale or exhibition.
(2) Specific diseases:
(a) Rattles shall be negative to an official test for Avian influenza, as defined by 9 C.F.R. 145.14, within thirty (30) days prior to sale.
(b) Rattles shall be negative to an official test for Salmonella pullorum, as defined by 9 C.F.R. 145.14, within thirty (30) days prior to sale.
(c) A state veterinarian’s statement that no contagious, infectious, or communicable disease is present shall accompany the rattles for sale or exhibition.
(d) Exhibition. Rattles shall be negative to an official test for Avian Influenza and Salmonella within 150 days prior to date of exhibition.

Section 10 (4). Camelids (Llamas, Alpacas, Camels, etc.):
(1) General requirements (Brucellosis):
(a) camelids moving for sale or exhibition shall meet requirements in subsections (2) and (3) of this section.
(b) All camelids shall be identified with an official identification tag or other official identification method.
(2) Certificate of Veterinary Inspection:
(a) All camelids moving for sale or exhibition shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).
(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.
(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.
(3) Specific diseases:
(a) Brucellosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.
(b) Tuberculosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.
(c) All camelids six (6) months of age or older shall be negative to an official Brucellosis test, within 150 days prior to sale.
(d) Camelids six (6) months of age or older shall be negative to an official Brucellosis test within thirty (30) days prior to date of sale.
(e) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam’s Certificate of Veterinary Inspection.
(f) Tuberculosis:
(a) Camelids six (6) months of age or older shall be negative to an official-axillary tuberculin test within 150 days prior to date of exhibition.
(b) Camelids six (6) months of age or older shall be negative to an official-axillary tuberculin test within sixty (60) days prior to sale.
(c) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam’s Certificate of Veterinary Inspection.

Section 11 (3). Cervid (Deer, Elk, Moose, and All Other Members of the Family Cervidae):
(1) General requirements:
(a) Cervids moved for export, sale or other purposes except as noted in subsection (1)(e) and (1)(d) of the section shall meet requirements in subsections (2) and (3) of this section.
(b) Cervids moved to a recognized slaughterhouse or a veterinarian clinic shall meet the requirements in subsection (4) of this section.
(c) All cervids shall be identified with an official identification tag or other official identification method.
(d) Cervids moved by wildlife rehabilitators permitted under 301 KAR 2 075 are exempt from this section.

(2) Certificate of Veterinary Inspection and Movement Permit:
(a) All cervids moving for export, intrastate sale or other purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020. Section 1(3)(c).
(b) A CVI for sale shall include the following:
1. Cervid’s name, address, and the Cervid Chronic Wasting Disease Surveillance and Identification program herd number.
2. Cervid’s name, address, and the Cervid Chronic Wasting Disease Surveillance and Identification program herd number.
(c) A CVI for change of ownership or sales will be valid for thirty (30) days.
(d) A permit shall be obtained from OSV prior to the export, sale or other movement of all cervids in Kentucky. The permit number shall be recorded on the CVI.
(3) Specific diseases:
(a) Brucellosis: Cervids six (6) months of age or older:
1. Shall be negative to an official brucellosis test, as defined in 9 C.F.R. Part 78, within thirty (30) days prior to date of sale.
2. Originate from a brucellosis accredited herd.
3. Shall be exempt from testing if Kentucky has bovine or cervid brucellosis free status and if brucellosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.
(b) Tuberculosis: Cervids twelve (12) months of age or older:
1. Shall be negative to a single cervical tuberculin (SCT) test within sixty (60) days prior to date of sale.
2. Originate from a brucellosis accredited herd.
3. Shall be exempt from testing if Kentucky has bovine or cervid tuberculosis free status and if tuberculosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.
(4) Other movement. Cervids from captive cervid premises moving to a recognized slaughterhouse center or a veterinary clinic shall obtain a movement permit from the OSV prior to movement.

Section 12. Incorporation by Reference: (1) The following material is incorporated by reference:
(a) Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-72 (Apr. 2005);
(b) Equine Only Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-73 (Sept. 2008);
(c) Small Animal Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-74 (Jan. 2006);
(d) Equine Infectious Anemia (EIA) Test Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-301 (July 2005).
(e) EIA Laboratory Test Form, USDA APHIS VS Form 10-11 (May 2003);
(g) Non-NIPF flock Report, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-800 (Sept. 2005);
(h) Report of Sales of Hatching Eggs, Chicks and Poult's, USDA APHIS VS Form 9-3 (June 1989); and
(i) Permit for movement of restricted animals the USDA APHIS VS Form 1-27 (June 1989).
(1) Brucellosis:
(a) Cervids six (6) months of age or older shall be negative to an official-brucellosis test, as defined by 9 C.F.R. 78, within 150 days prior to the date of exhibition.
(b) Cervids six (6) months of age or older shall be negative to an official-brucellosis test within thirty (30) days prior to the date of sale, except if originated within a certified brucellosis-free herd.
(c) Cervids not weaned, when accompanied by their dam, shall be identified and recorded on the dam’s Certificate of Veterinary Inspection.
(2) Tuberculosis:
(a) Cervids six (6) months of age or older shall be negative to a single cervid tuberculin (SCT) test within 150 days prior to the date of exhibition.
Section 13. Intra-state Movement Requirements. All intra-state movements of cattle other than to a state-recognized slaughter center, shall be accompanied by an intra-state movement certificate of veterinary inspection approved by a licensed, accredited veterinarian. The intra-state movement certificate shall include the following:

(1) Consignee's name, address, and state veterinarian issued permit number;
(2) Consignee's name, address, and state veterinarian issued permit number; and
(3) The permit number to ship, which may be obtained by telephone, issued by the State Veterinarian prior to movement.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: July 10, 2007
FILED WITH LRC: July 10, 2007 at 6 p.m.
CONTACT Person: Robert Stoudt or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation defines the requirements for the intra-state movement, sale and exhibition of livestock and poultry.
(b) The necessity of this administrative regulation: This regulation is necessary to prevent introduction of an animal disease, to control and eradicate animal diseases, and to protect the livestock economy of the state.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation explains specific areas of livestock disease monitoring and animal disease control for which the statute gives authority.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides relevant information for animal movement.
(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 update current regulations in response to changes in animal health programs and disease prevalence and therefore better serve Kentucky's animal industries.
(b) The necessity of the amendment to the administrative regulation: Program disease status has changed over the years through the joint efforts of state and federal animal health officials. Effective enforcement of regulations requires that they address current situations, concepts and standards. This is vital to the effective control of disease and the efficient movement and marketing of animals into and within the Commonwealth.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control. The amendment is in response to changes in disease status and animal movement.
(d) How the amendment will assist in the effective administration of the statutes: Regulation of animal movement and disease control must reflect current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries. The amendment is based on this principle and adds requirements where needed and removes unnecessary restrictions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

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 revision will simplify the necessary actions for livestock producers in regards to the intra-state movement of animals. It will require fewer test requirements for some species and the needed animal movement permits will be valid for a much longer period of time than under the former version. This revision may require nominal expenditures by the producer to provide approved animal identification for animal movement. For animals that do not leave the premises of origin, no new measures are required. This revision may require livestock markets to enhance their ability to identify and record the movement of animals through their facility.
(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 nominal costs to producers and some infrastructure costs to marketing entities. These costs are indeterminable at this time.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state's livestock industry from serious animal disease outbreaks that may decrease all animal movement and business. The marketability of Kentucky livestock in other states and countries will increase. Producers, livestock markets and vendors will all benefit from the movement of animals properly identified, allowing for rapid traceback in response to animal disease outbreaks.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No expense
(b) On a continuing basis: No expense
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund to KDA for personnel
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees involved.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees, nor does it change previous fees.
(9) TIERING: Is tiering applied? No. All regulated entities have the same 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? 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?

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:
STATEMENT OF EMERGENCY 103 KAR 50:020E

This emergency administrative regulation is being promulgated in response to the change to the statutes relating to tax increment financing, specifically KRS 65.7041 through 65.7083. KRS 65.7071(2)(b) provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs. This emergency administrative regulation must be placed into effect immediately, as applicants, in order to qualify for the signature project prior to January 1, 2008 must have completed the entire application process and have a project grant agreement executed prior to that date. An ordinary administrative regulation is not sufficient, because it will delay the filing of applications and make it impossible for the State Tax Increment Financing Commission and potential applicants to complete the process prior to the January 1, 2008 statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor MIKE BURNSIDE, Secretary

FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Tax Increment Financing (New Emergency Administrative Regulation)

103 KAR 50:020E. Application for state participation in tax increment financing projects.

RELATES TO: KRS 65.7045, KRS 65.7073, KRS 65.7075 and KRS 65.7083
STORATORY AUTHORITY: KRS 65.7071(2)(a)1 b.l.; KRS 65.7071(2)(b)
EFFECTIVE: July 31, 2007
NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7071(2)(b) provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs. This administrative regulation sets forth the required application process by which a city, county or agency may seek state participation of tax increment financing in a project.

Section 1. Definitions. (1) "Agency" has the same meaning as in KRS 65.7045(2).
(2) "City" has the same meaning as in KRS 65.7045(7).
(3) "Commonwealth" has the same meaning as in KRS 65.7045(10).
(4) "County" has the same meaning as in KRS 65.7045(11).
(5) "Office" has the same meaning as in KRS 65.7045(29).
(6) "Project" has the same meaning as in KRS 65.7045(33).

Section 2. Application Process. A city, county or agency may submit an application to the office requesting that the Commonwealth participate in a project. The city, county, or agency shall file an original and one copy of the appropriate application form for the program requested and all required attachments.

Section 3. Application Forms. (1) A city, county or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues shall file "Application for the Commonwealth Participation Program for State Real Property Tax Revenues" with all required attachments and information.
(2) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program prior to January 1, 2008 shall file "Application for the Signature Project Program - 2007" with all required attachments and information.
(3) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program on or after January 1, 2008 shall file "Application for the Signature Project Program" with all required attachments and information.
(4) A city, county, or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for Redevelopment in Blighted Urban Areas Program shall file "Application for the Commonwealth Participation Program for State Redevelopment In Blighted Urban Areas" with all required attachments and information.

Section 4. Written Determination. The office shall provide its written determination required by KRS 65.7071(2)(a)2. to the applicant based upon:
(1) The applicant's satisfaction of the applicable statutory requirements of KRS 65.7041 through 65.7083;
(2) The application submitted to the office under Section 2 of this administrative regulation;
(3) Written and oral communications with the applicant;
(4) Independent analysis of the office based upon publicly available information; and
(5) If applicable, the findings of the independent consultant's report required by KRS 65.7071.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference
(a) "Application for the Signature Project Program - 2007", (07/07)
(b) "Application for the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues", (07/07)
(c) "Application for the Commonwealth Participation Program for Mixed Use Redevelopment In Blighted Urban Areas", (07/07)
(d) "Application for the Signature Project Program", (07/07)
(2) A copy of these documents may be inspected, copied, or obtained, subject to applicable copyright law from the Office of Tax Increment Financing, Department of Revenue, 200 Fair Oaks Lane, from 8 a.m. to 4:30 p.m., Monday through Friday.

MIKE BURNSIDE, Secretary APPROVED BY AGENCY: July 27, 2007
FILED WITH LRC: July 31, 2007 at 2 p.m.
CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3694.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does. KRS 65.7071(2)(b) provides that standards and requirements for the tax increment financing application process shall be established by the office through the promulgation of administrative regulations in accordance with KRS Chapter 13A. This regulation also sets forth the additional standards and requirements for the application process and also incorporates by reference the required application forms used in the general administration of applications by the office with respect to a request for state participation.
(b) The necessity of this administrative regulation. This administrative regulation is necessary in order for the office to process and review applications and to meet both the requirements of KRS 65.7071(2)(b) and Chapter 13A.110, which requires that forms required to be submitted by a regulated entity shall be included in
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an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7071(2)(b) provides that additional standards and requirements for the tax increment financing application process shall be established by the office through the promulgation of administrative regulations in accordance with KRS Chapter 13A. This regulation sets forth the additional standards and requirements for the application process and also incorporates by reference the required application forms used in the general administration of applications by the office with respect to a request for state participation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: this administrative regulation allows the office to process and review applications, and to meet both the requirements of KRS 65.7071(2)(b) and 13A.110, which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Local governments (city and county) and designated local agencies (which number may vary) will be directly affected. There is also a indirect impact on developers, businesses and individuals living within a development area.

(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) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agencies requesting state participation in a development project by way of tax increment financing will have to complete an application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Entities seeking to participate in either the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas or Signature Project Program if a project grant agreement was not executed prior to January 1, 2008 will have to pay costs associated with the independent consultant’s fee for preparation of the consultant’s report.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities will be in compliance with the application process, which is the first step towards obtaining state participation in a project. Depending on the size of the project, the amount of state participation may be substantial.

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

(a) Initially: Costs to implement this will be minimal, as they are included in the costs already required, pursuant to statute, to be incurred in processing applications.

(b) On a continuing basis: Same as initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Finance and Administration Cabinet agency funds. In addition, the independent consultant’s fee for preparation of the consultant’s report required by the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas or Signature Project Program if a project grant agreement was not executed prior to January 1, 2008 will be paid by the applicant.

(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 in funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees not already provided for by statute.

(g) TIERING: Is tiering applied? Tiering is not applied. The requirements of this regulation apply to all applicants seeking state participation in a project.

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? State Commission of Tax Increment Financing and Office of Tax Increment Financing, Division of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This regulation is authorized by KRS 65.7071(2)(b), which provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state’s tax increment financing participation programs.

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? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

(d) How much will it cost to administer this program for subsequent years? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

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
103 KAR 50:040E

This emergency administrative regulation is being promulgated in response to the changes to the statutes relating to tax increment financing, specifically KRS 65.7041 through 65.7083. The State Tax Increment Financing Commission is required by KRS 65.7066(6) to promulgate any regulations necessary for the administration of the statutes relating to tax increment financing. This emergency administrative regulation must be placed into effect immediately, as applicants, in order to qualify for the signature project prior to January 1, 2008 must have completed the entire application process and have a project grant agreement executed prior to that date, and this regulation will provide guidance to the applicants as to certain terms that affect the application. An ordinary administrative regulation is not sufficient, because it will delay the filing of applications and make it impossible for the State Tax Increment Financing Commission and potential applicants to complete the process prior to the January 1, 2008 statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler simultaneously with this emergency adminis-
tractive regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MIKE BURNSIDE, Chair

FINANCE AND ADMINISTRATION CABINET
State Tax Increment Financing Commission
(New Emergency Administrative Regulation)

103 KAR 50:040E. General Administration.

RELATES TO: KRS 65.7041-KRS 65.7083
STATUTORY AUTHORITY: KRS 65.7069(8)
EFFECTIVE: July 31, 2007
NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7069(8) authorizes the State Tax Increment Financing Commission to promulgate any regulations necessary for the administration of the statutes relating to tax increment financing, specifically KRS 65.7069 – 65.7081. These statutes clarify various criteria that a project must satisfy in order to obtain state participation through a project grant agreement.

Section 1. Definitions. (1) "Capital investment" has the same meaning as in KRS 65.7045(6).
(2) "Commission" has the same meaning as in KRS 65.7045(9).
(3) "Commonwealth" has the same meaning as in KRS 65.7045(10).
(4) "Commonwealth participation programs" means the programs described in KRS 65.7073, 65.7075, and 65.7077.
(5) "Footprint" has the same meaning as in KRS 65.7045(18).
(6) "Incremental revenues" has the same meaning as in KRS 65.7045(21).
(7) Minimum capital investment means the capital investment requirement established for the Commonwealth participation programs.
(8) "Project" has the same meaning as in KRS 65.7045(33).
(9) "Project grant agreement" has the same meaning as in KRS 65.7045(34).
(10) "Purposely private development" means a project that does not include either approved public infrastructure costs or approved signature project costs as an integral component of the project.

Section 2. Criteria For Determining A Project Footprint. The commission is required by the provisions of KRS 65.7073(6), 65.7075 (5), and 65.7077(8) to determine the footprint of each project it approves for incentives. The project footprint is the area within which the minimum capital investment required for the Commonwealth participation programs must be made. The project footprint is also the area within which incremental revenues may be recovered from the Commonwealth.

(a) Minimum Capital Investment. For an area to be included as part of the project footprint, actual capital investment shall be made in the area. Each proposed project shall meet minimum investment requirements to qualify for state participation. In determining the footprint of a proposed project, the commission shall consider the concentration and sources of capital investment throughout the proposed footprint and the related nature of proposed capital investments to ensure that:
1. Unrelated projects are not combined into one footprint to meet minimum investment requirements; and
2. Purposely private development is not combined with independent, purely public infrastructure development that would have likely occurred without incentives for the purpose of creating a source of recovery for the private development.
(b) In making this determination of a discrete footprint, the commission shall consider whether:
1. The proposed capital investments and areas included in the proposed footprint have a common thematic linkage, other than general economic development, between or among the discrete items of capital investment that has been centrally managed or coordinated to result in a unified economic impact, and
2. The project, taken in its entirety would not be feasible or complete without any of the discrete items of capital investment that are aggregated as part of the proposed footprint.

(2) Incremental Revenues. For revenues to be included as incremental revenues, the taxable activity shall occur within the footprint, and the new revenues shall be reasonably and directly related to the capital investments made. The purpose of tax increment financing is to allow for the pledge of revenues generated through capital improvements to support the development of those capital improvements. Therefore, in pledging Incremental revenues, the commission shall consider whether proposed capital improvements will reasonably result in increased revenues, and shall pledge only those incremental revenues that it determines are reasonably generated as a result of the proposed capital investment. When determining whether a capital investment in an existing structure rises to the level of significance for the entire structure to be included in increment calculations, the Commission shall consider any or all of the following guidelines:
(a) If improvements to an existing structure fundamentally and profoundly rehabilitate or otherwise re-establish the existing structure as a viable source of economic activity, then the so-affected portions of the existing structure where the capital investments occurred may be considered;
(b) If the improvements to an existing structure are isolated to a discrete floor, wing, room, or any other meaningful partition of an existing structure, then only the affected or renovated partition or partitions may be considered for purposes of inclusion in the incremental revenue calculations; and
(c) If improvements to an existing structure are limited to sidewalks, street lights, parking expansions, landscaping, or any other improvements to the exterior of an existing structure, then immediate proximity to these improvements shall not be sufficient to include taxable activity taking place within an existing structure in incremental revenue calculations for the project. These capital improvements may, however, be counted toward the capital investment of the project.

Section 2. Land Preparation. (1) "Land preparation, including demolition and clearance work," as that term is used in KRS 65.7045(3)(a), means the costs attributable to preparing the public infrastructure portion of the footprint for development, and does not include land acquisition costs.
(2) "Land preparation, demolition and clearance," as that term is used in KRS 65.7077(2), means the costs attributable to preparing the footprint, other than the public infrastructure portion of the footprint, for development and does not include land acquisition costs.

MIKE BURNSIDE, Chair
APPROVED BY AGENCY: July 27, 2007
FILED WITH LRC: July 31, 2007 at 2 p.m.
CONTACT PERSON Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person. Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides additional guidance on certain terms used in KRS 65.7069 through 65.7081.
(b) The necessity of this administrative regulation: This administrative regulation is necessary for the administration of the statutes relating to tax increment financing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 65.7069(8) by providing guidance needed to administer the tax increment financing statutes.
(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 providing additional guidance and clarification to terms.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants and future participants in state programs for tax increment financing will be 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 now 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: Applicants will have to take no additional steps beyond those already required by the statute in order to comply with this administrative regulation, as this regulation merely clarifies what certain terms mean.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be required beyond that already required by the statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities, since they will understand the meaning of certain terms, will be able to better comply with the statutory requirements and improve their ability to demonstrate that they are eligible for state participation. Depending on the size of the project and the amount of state participation, the benefits may be substantial.

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

(a) Initially: It is not anticipated that this administrative regulation will necessitate any additional costs.

(b) On a continuing basis: See above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will come from the Office of Tax Increment Financing's budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not being used, as the terms of clarification in this administrative regulation apply to all participants and applicants in a state participant program.

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? State Commission of Tax Increment Financing and Office of Tax Increment Financing, Division of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This regulation is authorized by KRS 65.7071(2)(b), which provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs.

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? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

(d) How much will it cost to administer this program for subsequent years? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

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

105 KAR 1:390E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the administrative regulation should be enacted on an emergency basis. This emergency administrative regulation is intended to comply with the provisions of Treats. Regs. §§ 1 401-1(b)(1)(i) and 1.401(a)-1 and to maintain the tax qualified status of the Kentucky Employees Retirement Systems, the County Employees Retirement System, and the State Police Retirement System under IRC Section 401(a) in accordance with KRS 61 6459(g). An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to act in compliance with the provisions of Treats. Regs. §§ 1.401-1(b)(1)(i) and 1.401(a)-1 and to maintain the tax qualified status of the Kentucky Employees Retirement Systems, the County Employees Retirement System, and the State Police Retirement System under IRC Section 401(a). An ordinary administrative regulation would not be sufficient to comply with the provisions of Treats. Regs. §§ 1.401-1(b)(1)(i) and 1.401(a)-1 and to maintain the tax qualified status of the Kentucky Employees Retirement Systems, the County Employees Retirement System, and the State Police Retirement System under IRC Section 401(a) because of the need for immediate compliance. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulators Compiler on August 15, 2007.

ERNIE FLETCHE, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:390E. Employment after Retirement.

RELATES TO: KRS 61.637, 26 U.S.C. Section 401(a), 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.6459(g)

EFFECTIVE: August 15, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.6459(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.832. This administrative regulation concerns the administration of KRS 61.637 if a member returns to employment with a Kentucky Re-
tirement Systems participating employer after retirement, whether in a Kentucky Retirement Systems Covered position or a noncovered position. This administrative regulation is intended to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. Section 401(a), and comply with the provisions of 26 C.F.R. 1.401-1(b)(1)(ii) and 1.401(a)-1.

Section 1. Definitions. (1) "Bona fide separation from service" means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement between the participating employer and the member at the time of retirement to return to work for the participating employer after retirement in any capacity, including an agreement to return as a leased employee.

(2) "Covered Position" means a position that is required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(3) "Noncovered Position" means a position that is not required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(4) "Normal retirement age" means:
   (a) Age sixty-five (65) for a nonhazardous member as defined in KRS 61.510(18), and 78 510(18), or
   (b) Age fifty-five (55) for a hazardous member as defined in KRS 16.505(15).

Section 2. Requirements for Commencing a Retirement Benefi- t. (1) For purposes of commencing a retirement benefit, a member shall terminate employment with the participating employer and shall have a Bona Fide Separation from Service, except as provided in Section 9. A prearranged agreement to be reemployed as a leased employee or as an independent contractor will be evaluated by the Kentucky Retirement Systems to determine if there is a continuing employment relationship.

(2) In order to implement this administrative regulation, the retiring member and the member's last employer shall certify at the time of application for a retirement benefit that there is no prearranged agreement to reemploy the retiring member. The member and the member's last employer shall complete and file at the retirement office the Form 6751, Member and Employer Certification Regarding Reemployment. The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with the same employer from which the member retired or with any employer that participates in the retirement system from which the member retired. The retirement office shall not process a monthly retirement allowance until the member has filed the Form 6751, Member and Employer Certification Regarding Reemployment, at the retirement office.

Section 3. The Same Employer for Purposes of KERS and SPRS. (1) For purposes of applying KRS 61.637, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

Section 4. The Same Employer for Purposes of CERS. (1) For purposes of applying KRS 61.637, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

Section 5. Returning to Work with the Same Participating Employer. (1) Returning to work in a covered position in the same retirement system without a break in service or a bona fide separation from service. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, except as provided in Section 9, and returns to work with the same participating employer, in a covered position in the same retirement system, the member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(2) Returning to work in a covered position in a different retirement system.

(a) If the member does not have a bona fide separation from service, except as provided in Section 9, and returns to work with the same participating employer in a covered position in a different retirement system, the member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(b) If a member does have a bona fide separation from service (unless such a bona fide separation from service is not required under Section 9 of this administrative regulation) and returns to work with the same participating employer in a covered position in a different retirement system and if the member does not have a one (1) calendar month break in service, the member's benefit shall be suspended for the first month of the member's reemploy- ment. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the month.

(3) Returning to work in a noncovered position. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, and returns to work with the same participating employer in a noncovered position in any of the retirement systems administered by Kentucky Retirement Systems, the member's retirement benefit shall be suspended for the duration of the employment. If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.

(4) Returning to work with the same principal duties. If the member has a one (1) calendar month break in service and if there was a bona fide separation from service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with the same principal duties, the member's retirement benefit shall be suspended for a period beginning on the first of the month of the reemployment and ending on the first of the month following six (6) months from the member's first employment termination date, unless the member had reached Normal Retirement Age at the time of employment termination. If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, or health plan premiums by the Kentucky Retirement Systems during the period of suspension.

(5) Returning to work with different principal duties. If the member has a one (1) calendar month break in service and if there was a Bona Fide Separation from Service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with different principal duties, the member's retirement benefit shall continue unaffected.

Section 6. Returning to work for a different participating employer.

(1) No Requirement for a bona fide separation in service. If the member returns to work in any position, whether covered or noncovered, with a different participating employer than the member's last employer prior to retirement, no bona fide separation from service is required. However, the requirement that there be at least a one (1) month break in service is applicable as set forth below in this administrative regulation and in KRS 61.637.

(2) Returning to work in the same retirement system with a break in service. If the member has a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which the member retired, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

(3) Returning to work in a covered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in the same retirement system from which the member retired, the member's retirement shall be voided. The member shall repay all
retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(4) Returning to work in a non-covered position in the same retirement system without a break in service. If a member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in the same retirement system in a noncovered position the member's retirement benefit shall continue unaffected.

(5) Returning to work in a different retirement system. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a different retirement system. In any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

Section 7. Status as an Employee. (1) A member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the member has accepted employment with the participating employer under a personal services contract. If Kentucky Retirement Systems determines that the member is an employee of the participating employer rather than an independent contractor, the member will be subject to Sections 5 and 6 of this administrative regulation. Kentucky Retirement Systems may take appropriate action to determine the individual's status as an independent contractor or employee.

Section 8. Leased Employees. (1) A member and a participating employer shall file at the retirement office written notice if the member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company. If the retirement system determines that the member is an employee of the participating employer rather than the providing company, temporary staffing agency, or other company, the member shall be subject to the provisions of Sections 5 and 6 of this administrative regulation.

Section 9. A Member who has Reached the Member's Normal Retirement Age. (1) For purposes of administering the provisions of KRS 61.637, a bona fide separation from service shall not be required if a member has attained normal retirement age at the time of termination of employment. However, the requirement that there be at least a one (1) month break in service is applicable as set forth above in this administrative regulation and in KRS 61.637.

Section 10. Incorporation by Reference. (1) Form 6751, "Member and Employer Certification Regarding Reemployment", August 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: August 3, 2007
FILED WITH LRC: August 15, 2007
CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact. J. Eric Wampler
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the requirements for returning to employment after retirement.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer establish the procedures and qualifications for compliance with KRS 61.637, 26 U.S.C. 401(a) and 26 C.F.R. §§ 1.401-1(b)(1)(i) and 1.401(a)-1.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their status as public defined benefit plans under 26 U.S.C. 401(a).
(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 the provisions for employment after retirement in accordance with 26 U.S.C. 401(a)(9) 26 C.F.R. §§ 1.401-1(b)(1)(i) and 1.401(a)-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: 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: All members of Kentucky Retirement Systems who become reemployed after their effective retirement date and the participating employers who employ them.

(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 members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Ordinary administrative costs. Members and participating employers are already required to submit completed forms and reports to Kentucky Retirement Systems.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this regulation.
(b) On a continuing basis: There is no continuing cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is being applied? Tiering is not applied, all members and participating employers are treated the same.

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 Retirement Systems and its participating agencies.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. §401(a), 26 C.F.R. §§ 1.401-
10(1)(Y) and 1.401(a-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. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(b) 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 Kentucky Retirement Systems or its participating agencies.

(c) 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 Kentucky Retirement Systems or its participating agencies.

(d) How much will it cost to administer this program for the first year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the Kentucky Retirement Systems already administers KRS 61.631 and the agencies already file reports with Kentucky Retirement Systems.

(e) How much will it cost to administer this program for subsequent years? Minimal additional administrative 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:

STATEMENT OF EMERGENCY
806 KAR 17:180E

On June 26, 2007, HB 191 of the 2007 legislative session, as found in 2007 Ky. Acts ch. 128, became effective. 2007 Ky. Acts ch. 128 requires an insurer to be the primary payer of covered, medically necessary health care provided to a prisoner, who is confined in jail, holdover, or regional jail if the prisoner holds a policy, contract or certificate of insurance coverage and payment of premiums is current. The Kentucky standard health benefit plan, form HIPMC-SP1, which may be offered in the small group and individual markets under KRS 304.17A-250, is currently offered by five (5) insurers and the Kentucky Access Program. The plan currently includes an exclusion of services, supplies or other care provided in the treatment of injuries sustained or illnesses resulting from participation in a civil disturbance or crime. Since this exclusion conflicts with KRS 304.128, an amendment to the standard health benefit plan is necessary KRS 304.17A-250(1) states that the Executive Director of Insurance shall define one (1) standard health benefit plan and shall not alter or amend the standard health benefit plan more frequently than annually. Pursuant to this new legislation, the exclusion, which is referenced herein and as incorporated by reference in 806 KAR 17:180, was amended to comply with KRS 304.128. Furthermore, any revisions to the standard health benefit plan must be effective on July 15, 2007 pursuant to KRS 304.17A-250(1) In order to implement the 2007 legislative changes in the standard health benefit plan by the July 15 date provided by KRS 304.17-250(1) and the effective date of 2007 Ky. Acts ch. 128, it is necessary to promulgate this emergency regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 13, 2007. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
LLOYD R. CRESS, Deputy Secretary
TERRESA J. HILL, Secretary
TIM LEDONNE, Commissioner
JULIE MIX MCPEAK, Executive Director

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

806 KAR 17:180E. Standard health benefit plan.
RELATES TO: KRS 304.17A-080, 304.17A-250
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)
EFFECTIVE: July 13, 2007
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 enactment 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 to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage for the individual and small group markets.

This administrative regulation establishes one (1) standard health benefit plan that may provide health insurance coverage for 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 body established in accordance with KRS 304.17A-080.
(2) "Officer" is defined in KRS 304.1-002.
(3) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders:
(a) Established by the Office 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.
(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall
(a) Submit the 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 to be implemented;
(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 of each year:
(a) The office 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 pursuant to paragraph (a) of this subsection, and
(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the office 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; 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*, [06077] (67066) 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 Web site at http://doi.ppr.ky.gov/kentucky/.

JULIE MIX MCFEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 3 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-5888, fax (502) 564-2726.

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 defines the standard health benefit plan and establishes procedures for modifying the standard health benefit plan.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-250(1) which states that the executive director shall define one standard health benefit plan and to clarify the process for alterations, amendments, and replacements to the standard health benefit plan.
(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 in KRS 304.1-010. KRS 304.17A-250(1) requires the executive director to define one standard health benefit plan. This administrative regulation defines "The Kentucky Standard Health Benefit Plan, HIPMC-SP1* (06/07), which is incorporated by reference in this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statutes by defining the standard health benefit plan pursuant to KRS 304.17A-250(1) and by establishing procedures for recommending any annual modification to the standard health benefit plan.
(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 update the incorporated material to make technical changes. Implement recommendations from the Health Insurance Advisory Council meetings, as authorized in KRS 304 17A-080, and comply with 2007 Ky Act ch 128 sec 3.
(b) The necessity of the amendment to this administrative regulation: 2007 Ky Act ch 128 sec 3 created a new statute in KRS Chapter 441 which requires an insurer to be the primary payor of covered medically necessary health care to an insured person who is incarcerated in a local government jail if health benefit plan premiums are current and the insured prisoner has not been convicted. This administrative regulation must be amended to revise an exclusion in the incorporated material that conflicts with this new statute.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-250(1) allows the executive director to amend the standard health benefit plan annually. KRS 304 17A-080 requires the Health Insurance Advisory Council to review and discuss the design of the standard health benefit plan. This amendment revises the material incorporated by reference in conformance with recommendations from the Health Insurance Advisory Council meetings and with 2007 Ky Act ch 128 sec 3.
(d) How this amendment will assist in the effective administration of the statutes: This amendment incorporates changes brought about by the 2007 legislative session and defines one standard health benefit plan.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A change during the 2004 legislative session removed the requirement for all health insurers to offer the standard health benefit plan, therefore, KOI estimates that this administrative regulation will affect Kentucky Access and approximately five (5) Kentucky health insurers offering health benefit plans in the individual and small group market. Approximately 25,000 individuals are covered under a standard health benefit plan.
(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. Kentucky Access and Insurers offering the standard health benefit plan will be required to amend certificates of coverage and modify computer systems, as necessary.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Health insurers impacted by this administrative regulation routinely amend their plans yearly to comply with changing federal or state laws and less than 25,000 individuals are covered under this type of plan, therefore a significant cost is not expected.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers' certificates of coverage will be in compliance with 2007 Ky Act ch 128 sec 3 and this administrative regulation.
(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.
(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. 
(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 insurers offering the standard health benefit plan and Kentucky Access.

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. KRS 304.17A-250(1) requires the executive director of insurance to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets. 2007 Ky Act ch 128 sec 3 created a new coverage requirement - 538 -
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 on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

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:
KENTUCKY STATE BOARD OF ELECTIONS  
(As Amended at ARRS, August 14, 2007)  

31 KAR 6:030. Uniform definition of a vote.  

RELATES TO: KRS 117.265, 117.379, 117.381, 42 U.S.C. 15481  
STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15481(a)(6)  
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. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those standards [requirements].  

Section 1. Definitions. (1) "Accessibility device" means any mechanism used to aid the voter in casting his or her vote for a candidate or an answer to a question on a ballot and is approved pursuant to KRS 117.379 and 117.381.  
(2) "Ballot" is defined by KRS 117.375(6).  
(3) "Ballot label" is defined by KRS 117.375(5).  
(4) "Direct recording electronic DRE voting system" means a computer-driven unit that counts votes cast by a voter through the use of a touchscreen, a button, or an approved accessibility device, and that processes and records the data by means of internal memory devices.  
(5) "First name" means an individual's name or names given at birth, as distinguished from a family name or surname.  
(6) "Name" means one (1) or more first names coupled with one (1) or more surnames.  
(7) "Nickname" means a shortened version of an individual's name or a descriptive or alternative name, in addition to or instead of the first name or surname of an individual.  
(8)(4) "Optical scan voting system" means a tabulating device that reads paper ballots by detecting voters' marks using reflected or absorbed light.  
(9) "Overvote" means [when a voter has made] [makes] more than the permitted number of selections in a single race.  
(10) "Surname" means the family name, [automatically] bestowed at birth, acquired by marriage, or legally adopted by choice.  
(11) "Touchscreen" means a screen on a DRE voting system that the voter touches to enter his or her selections in casting a ballot in an election.  
(12)(6) "Write-in vote" means a vote on a ballot on which the voter writes, types, or uses an approved accessibility device to record the surname [name] of an eligible write-in candidate in the space reserved on the ballot for write-in votes and, on an optical scan ballot, properly marks the oval or connects the arrow according to the directions provided to the voter.  

Section 2. A ballot may be paper or electronic.  

Section 3. Definition of a Vote for the Direct Recording Electronic DRE Voting System (1) A vote on a direct recording electronic [DRE] voting system shall be the choice made when a voter selects a candidate, or the desired answer to a question, and touches the screen, presses a button, or uses an approved accessibility device to cast a ballot.  
(2) To select a candidate or an answer to a question, the voter shall:  
(a) Press the appropriate place on the touchscreen, press the button, or use an approved accessibility device to choose a candidate or answer to a question for which the voter desires to vote,  
(b) Type on the touchscreen or use the scrolling device to select on the screen the letters for the name of a write-in candidate in accordance with the Instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote; or  
(c) Press the appropriate place on the ballot label to designate a write-in candidate and write in the name of an eligible candidate on the paper provided in the write-in candidate window,[(e)]  
[(d) Use an approved accessibility device on an accessible voting unit to signify the voter's selection of a particular candidate or answer to a question for which the voter desires to vote.]  
(3) To cast a ballot, the voter shall:  
(a) Press the place on the touchscreen or press the button designated for casting the ballot; or  
(b) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.  

Section 4. Definition of a Vote for the Optical Scan Voting System. (1) Automatic tabulation. If ballots are tabulated electronically, a vote cast on an optical scan voting system shall be the choice made by a voter by:  
(a) Filling in the oval or connecting the arrow next to the candidate's name or the question choice; or  
(b) Writing in the name of an eligible candidate in the designated write-in space and filling in the oval or connecting the arrow next to the designated write-in space.  
(2) Manual tabulation. If ballots are tabulated manually, the following marks made by a voter shall constitute a vote for a candidate or question choice on an optical scan voting system:  
(a) The majority of an oval or arrow designating a candidate or question choice is filled in;  
(b) The oval or arrow next to the candidate's name or the question choice is circled or underlined;  
(c) The candidate's name or the question choice is circled or underlined;  
(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;  
(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or  
(f) There is a diagonal, horizontal, or vertical line:  
1. A portion of which intersects two (2) points on the oval or arrow next to the candidate's name or the question choice; and  
2. That does not intersect another oval or arrow at any two (2) points.  

(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.  
(a) If write-in ballots are tabulated manually, the following shall constitute a valid vote for a candidate:  
[(e)] [The voter shall cause the oval or arrow next to the area designated for the selection of a write-in candidate to be marked consistent with subsection (2) of this section]; and  
2. The voter shall write the name of an eligible write-in candidate under KRS 117.265 [is written] in the area designated for the selection of a write-in candidate,[and]  
(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote.  
(4) Manual tabulation of other marks or words. If a choice is indicated in accordance with subsection (2) or (3) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:  

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Section 5. Definition of a Vote for a Paper Ballot. (1) Tabulation. The following marks made by a voter shall constitute a vote for a candidate or question choice on a paper ballot:
(a) The majority of a box or space designating a candidate or question choice is filled in;
(b) The box or space next to the candidate's name or the question choice is circled or underlined;
(c) The candidate's name or the question choice is circled or underlined;
(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;
(e) There is an ‘X’, a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or
(f) There is a diagonal, horizontal, or vertical line:
1. A portion of which intersects two (2) points on the box or space next to the candidate's name or the question choice; and
2. That does not intersect another box or space at any two (2) points.

(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(2) Write-in voting on a paper ballot.
(a) The following shall constitute a valid vote for a candidate:

[repeated text]

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote.

(3) Other marks or words on a paper ballot. If a choice is indicated in accordance with subsection (1) or (2) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:
(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or
(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 6. Definition of a Vote for a Paper Ballot. Write-in Voting Generally. (1) Only votes cast for eligible write-in candidates under KRS 117.265 shall be considered valid and counted.

(2) A write-in vote for a candidate whose name already appears on the ballot label as a candidate shall not be counted as a vote under KRS 117.265.

(3) The use of ink, markers, labels, rubber stamps, or other similar devices shall not be counted as write-in votes.

(4) Any spurious misspelling or other minor variation in the form of the name of a candidate shall be disregarded in determining the validity of a write-in vote as long as the intended candidate may [can] be clearly determined.

(5) Writing in only the [last-name-of] surname of an eligible candidate shall constitute a valid vote, unless there is more than one (1) filed candidate with the same surname [last-name] for that office. If there is more than one (1) filed candidate with the same surname [last-name] for that office, writing in only the last name or surname shall not constitute a vote.

(6) Writing in only an abbreviated form of the surname shall not constitute a valid vote.

(7) Writing in only the first name of an eligible candidate shall not constitute a valid vote.

(8) Writing in only the initials of a candidate shall not constitute a vote.

(9) If the voter writes in only the nickname of an eligible candidate shall not constitute a valid vote.

(10) If the voter writes in any other name along with the surname of an eligible write-in candidate, the other name written by the voter shall comply with the variations of names listed by the candidate on SBE/SOS/01, SBE/SOS/02, or SBE/SOS/03, depending on the candidate, to constitute a valid vote.

(11) Writing in the surname [name] of the candidate for Governor or the surname [name] of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the state.

(12) Writing in the surname [name] of the candidate for President or the surname [name] of the candidate for Vice President shall be sufficient to cast a write-in vote for the state.

Section 7. This administrative regulation shall not diminish the powers granted to the State Board of Elections and County Boards of Elections established by KRS Chapter 117.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) SBE/SOS/01 "Declaration of Intent to be a Write-In Candidate", (June 2007 edition);
(b) SBE/SOS/02 "Presidential/Vice Presidential Candidates' Declaration of Intent to be Write-In Candidates", (June 2007 edition);
(c) SBE/SOS/03 "Governor/Lieutenant Governor Declaration of Intent to be a Write-In Candidate", (June 2007 edition).

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

TREY GRAYSON, Chair
APPROVED BY AGENCY: June 11, 2007
FILED WITH LRC: June 14, 2007 at 11 a.m.
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 14, 2007)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.578, 16.601, 61.640, 78.545
STATUTORY AUTHORITY: KRS 16.578, 61.640, 61.645(9)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(a) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(a) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.576, 16.601 and 61.640 provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation establishes the procedures for issuance of benefits if death occurs prior to retirement.

Section 1. (1) After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member.

(2) The retirement system shall require completion of:
(a) Form 6810, Certification of Beneficiary, if the beneficiary is eligible for monthly payments; or
(b) [revised] Form 6825, Refund of Deceased Member’s Account, if the beneficiary is eligible only for a refund of the member’s account.
Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member;

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary;

(3)(a) If a beneficiary or dependent child is a minor, a copy of the minor's birth verification, and a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor;

(b) If benefits are payable to dependent children as defined in KRS 16.505(17), the parent or guardian shall provide:

a. A completed Form 6458, Designation of Dependent Child

b. If applicable, for each child age eighteen (18) years or over, verification of full-time student status, which shall be filed with the retirement office for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester; and

c. If applicable, notice of:

a. The death of a dependent child;

b. The marriage of a dependent child; or

c. A dependent child over the age of eighteen (18) years who ceases to be a full-time student, if dependent children are eligible for payments, a Form 6458, Designation of Dependent Child, for each dependent and verification of full-time student status of any dependent child age eighteen (18) or older. The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide verification of the child's status as a full-time student.

(4) If the beneficiary is the surviving spouse of the deceased member and the spouse elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or sixty (60) months certain option, a Form 6205, Direct Rollover/ Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;

(5) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or sixty (60) months certain option, a Form 6206, Direct Rollover/ Direct Payment Election Form for a Non-spouse Beneficiary of an Eligible Rollover Distribution;

(6) If a beneficiary is divorced from the member, a copy of the divorce decree;

(7) If monthly benefits are available to the beneficiary, copies of the birth verification certificates of the member and the beneficiary;

(8) If an estate is beneficiary, a copy of the court order appointing the executor, administrator, or personal representative of the estate, or the court order dispensing with formal administration of the estate.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until [4-6]teen the cause of death is [to be] fully explained.

Section 4. (1) Upon receipt of the death certificate and other applicable [necessary beneficiary] documents, the retirement office shall provide to the beneficiary the monthly payment options available on the Form 6010, Estimated Retirement Allowance.

(2)(a) If multiple beneficiaries are named, the retirement system shall provide the Form 6010, Estimated Retirement Allowance, to the first named beneficiary on the member's beneficiary designation form.

(b) The additional beneficiaries shall be provided a Form 6011, Retirement Monthly Payment Options.

(c) The first named beneficiary shall be responsible for obtaining the signatures of the multiple beneficiaries on the Form 6010, Estimated Retirement Allowance, and returning the completed Form 6010, Estimated Retirement Allowance, to the retirement office.

(d) The multiple beneficiaries shall return all necessary docu-
Section 1. (1)(a) The member shall submit a Form 6000, Notification of Retirement, to the retirement system no earlier than six (6) months prior to the member's [his] desired effective retirement date.

(b) The member shall provide current information regarding any sick or compensatory leave balances with the Form 6000, Notification of Retirement.

(c) The member shall file a copy of the member's most recent check stub indicating the sick and compensatory leave balances or the member shall submit written verification by the member's employer of the member's sick and compensatory leave balances as of the member's actual or scheduled employment termination date.

(2) The member shall designate the beneficiary of the member's [his] retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement; shall be dated and the member's signature shall be witnessed.

Section 2.(1) The retirement system shall provide an estimate of the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or the member's [his] employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate the member's [his] choice of payment option [optional].

Section 3.(1)(a) The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance.

(b) The member's signature shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office [as required by subsection (2)(c) or (3) of this section].

(2)(a) The member's employment shall be terminated [The member shall terminate his employment] the month before the member's [his] effective retirement date.

(b) The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable [necessary] forms, as provided in this administrative regulation, have been filed at the retirement office.

(c) The Form 6010, Estimated Retirement Allowance, and all other applicable [necessary] forms, as provided in this administrative regulation, shall be filed in the retirement office [by close of business] on the last [business] day of the month preceding the month of the member's effective retirement date.

(3) If the member is retiring [pursuant to] [under] early retirement provisions, the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's [his] retirement date to retain the effective date of retirement shown on the form.

(4)(a) If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's [his] retirement date, the member's Form 6000, Notification of Retirement, shall beconsidered void and the member [his] shall be required to submit a new Form 6000, Notification of Retirement.

(b) If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary or beneficiaries [beneficiary(ies)] and contingent beneficiary or beneficiaries [beneficiary(ies)] designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4.(1)(a) The member shall provide the retirement system a copy of the member's [his] birth certificate or other [appealing] verification of age [hospital-record] and, if a surviswornorship payment option is selected, a copy of the birth certificate or other [appealing] verification of age [hospital-record] of the beneficiary named on the member's [his] Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other [appealing] verification of age, the systems shall [may] require the member or beneficiary to submit a marriage license, court order, or legally-binding [other acceptable] documentation of the name change.

(2) If a birth certificate or hospital record is not available, the retirement system may, in its discretion, accept other proof of age accompanied by a letter from the office responsible for birth records in the state of the individual's birth stating that a birth certificate is not available.

(3) The retirement system shall [may, in its discretion] accept one (1) or more of the following as proof of age of the member or [his] beneficiary:

(a) Age record of the Social Security Administration;

(b) Immigration and naturalization service records;

(c) Baptismal record;

(d) Marriage license;

(e) School record;

(f) Birth certificate [of child];

(g) Military discharge;

(h) U.S. passport, or

(i) Other reliable proof of age that may be used by the courts to verify the person's age [as determined to be acceptable by Kentucky Retirement Systems].

Section 5.(1)(a) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(b) The recipient and] The financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(2)(1)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(3)(4) The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with a financial institution in the recipient's financial institution does not participate in the electronic transfer of funds program.

(4)(9) The retirement office shall not process the retirement allowance until the recipient has filed a completed:

(a) Form 6130, Authorization for Deposit of Retirement Payment;

(b) [filed a completed] Form 6135, Request for Payment by Check.

Section 6.(1) The retirement office shall provide a Form 6120, Certification of Servicios, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which the member [his] may be eligible to purchase credit prior to retirement or the retirement date.

(2) The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7.(1)(a) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, the member's spouse, or the member's dependents pursuant to [he, spouse, and dependents under] the group insurance plan upon [at the time of] retirement.

(b) The recipient shall complete the Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems [Commonwealth of Kentucky, Kentucky Retiree Health Insurance Application] or the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form [High and Low Option Coverage].

(2)(a) If the insurance form is received by the last day of the month prior to the month the initial retirement allowance is processed, the insurance coverage shall be effective the first day of the month the recipient becomes eligible for insurance coverage.

(b) If the form is received or if [any] changes are made within
thirty (30) days following the first day of the month in which the initial retirement allowance is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance is processed.

(2) A recipient who fails to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the initial retirement allowance is processed shall not be eligible for benefits pursuant to [under] the insurance plan until the following open enrollment period.

Section 8. (1) The retirement office shall provide a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments, to the member to request that federal income taxes be withheld or not withheld from the member’s [his] retirement allowance.

(2) If the member is eligible for benefits from the excess benefit plan, the member shall provide the information required by 26 U.S.C. 3402 for purposes of federal income tax withholding from the member’s retirement allowance [retirement office shall provide an IRS Form W-4 Employees Withholding Allowance Certificate] [a Form 6019, Federal Income Tax Withholding Preference for Periodic Payments Excess Benefit-Plan]

Section 9 (1) The retirement office shall provide a Form 6030, Death Benefit Designation, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

(2) If the member does not file or incorrectly complete,[or complete incorrectly] a Form 6030, Death Benefit Designation, the member’s estate shall become the default beneficiary.

Section 10. (1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office:

(a) A Form 2001, Membership Information;

(b) [Form.] A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

(c) A copy of the member’s birth verification;

(d) A copy of the birth verification for the beneficiary if selecting a survivorship option and

(e) [and] A completed Form 6130, Authorization for Deposit of Retirement Payment or

2.[[or]] A completed Form 6135, Request for Payment by Check.

(2) The retirement office shall not process a lump sum retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and

4. A copy of the member’s birth verification; and

(b) The member’s employer has filed at the retirement office proof of the member’s employment termination and reported all creditable compensation and accumulated sick leave.

(3) The retirement office shall not process a partial lump sum options retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;

4. A copy of the member’s birth verification; and

5. A copy of the birth verification for the beneficiary if selecting a survivorship option[s]; and

(b) The recipient has filed a completed:

1. Form 6130, Authorization for Deposit of Retirement Payment; or

[and] filed a completed Form 6135, Request for Payment by Check.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference

(a) Form 6000, “Notification of Retirement”, July 2004,[Kentucky Retirement Systems];

(b) Form 6010, “Estimated Retirement Allowance”, July 2004,[Kentucky Retirement Systems];

(c) Form 6130, “Authorization for Deposit of Retirement Payment”, October 2002,[Kentucky Retirement Systems];

(d) Form 6120, “Certification of Service”, July 2000,[Kentucky Retirement Systems];

(e) Form 6200, “Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form[High and Low Option Coverage]”, October 2006 [November 2002][Kentucky Retirement Systems];


(g) Form 6030, “Death Benefit Designation”, April 2002,[Kentucky Retirement Systems];


(i) Form 6135, “Request for Payment by Check”, February 2002;

(j) Kentucky Retirement Systems;

(k) Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems; June 2007;

(l) “Commonwealth of Kentucky − Retiree Health Insurance Application”, Kentucky Retirement Systems;

(m) Form 2001 “Membership Information”; February 2002;

(n) Kentucky Retirement Systems;


(p) Form 2005, “Beneficiary Designation”, June 2003,[Kentucky Retirement Systems]; and

(q) Form 6025, “Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution”, May 2007 [June 2004][Kentucky Retirement Systems].

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Randy Overstreet, Chair
APPROVED BY AGENCY: May 17, 2007
FILED WITH LRC: June 15, 2007 at 11 a.m.
CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800, ext. 5501, fax (502) 696-8801.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 14, 2007)

105 KAR 1:240. Death after retirement procedures.

RELATES TO KRS 15.645(10), (20), 61.623, 61.630, 78.545(16), (41)[16.505-16.652, 61.610-61.706, 78.610-78.652]
STATUTORY AUTHORITY: KRS 61.045(9)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems [board] to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.706, 16.510 to 16.652, and 78.520 to 78.852. [Certain retirement benefits are payable upon the death of a recipient.] This administrative regulation establishes [sets out] the information required before certain retirement benefits are paid

Section 1. After learning of the death of a recipient, the retirement system shall contact the named beneficiary or estate of the
Section 2. The retirement system shall require the following information:

(1) A copy of the recipient's death certificate. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may also require additional evidence relating to the cause of death or investigations and arrests by enforcement agencies and may delay benefits until [it deemes] the cause of death is [to be] fully explained;

(2) If there is a benefit payable to a beneficiary and the beneficiary is deceased, a copy of the beneficiary's death certificate;

(3) If the beneficiary is a minor child, a copy of the child's birth certificate and a [Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor][1];

(4) If the beneficiary is divorced from the recipient, a copy of the divorce decree;

(5) If the beneficiary is the surviving spouse of the deceased member and the spouse elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or $5,000 Death Benefit (chooses to rollover a lump sum benefit), a [Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution][1];

(6) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or $5,000 Death Benefit, a [Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution][1].

Section 3. If the payments are due to an estate, the retirement system shall also require a copy of the court order appointing an executor or administrator of the estate, or a copy of the court order dispensing with formal administration of the estate on which the payments due the estate are listed. [Verification of the name of the individual authorized to manage the financial affairs of the deceased]

Section 4. The beneficiary or authorized individual shall sign a [Form 6860, Affidavit for Recipient of Death Benefits][2], provided by the retirement system.

Section 5. Payments shall not be made until the affidavit has been completed and all verification submitted.

Section 6 (1) A recipient shall complete a [Form 6130 Authorization for Deposit of Retirement Payment][3], to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new [Form 6130, Authorization for Deposit of Retirement Payment][3], and filing the form at the retirement office [in Frankfort, the retirement office shall file all the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments to the member(individuals) requesting payment].

(4) The recipient may complete a Form 6135, [Request for Payment by Check][4] if the recipient does not currently have an account with the financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

(5) Payments shall not be made until all required information, documents, and forms are received at the retirement office. [The retirement office shall not process the retirement allowance until the recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment, or filed a completed Form 6136, Request for Payment by Check].

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

(a) [Form 6110, *Affidavit of Authorization to Receive Funds on Behalf of Minor*, May 2003][5], [Kentucky Retirement Systems];

(b) [Form 6600, *Affidavit for Recipient of Death Benefits*, July 2001][5], [Kentucky Retirement Systems];

(c) [Form 6130, *Authorization for Deposit of Retirement Payment*, October 2002][5], [Kentucky Retirement Systems];

(d) [Form 6135, *Request for Payment by Check*, February 2002][5], [Kentucky Retirement Systems]; and

(e) [Form 6025, *Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution*, May 2007][6], [Kentucky Retirement Systems]; and[-]

(f) [Form 6026, *Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution*, May 2007][6], [Kentucky Retirement Systems].

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RANDY OVERSTREET, Chair
APPROVED BY AGENCY: May 17, 2007
FILED WITH LRC: June 15, 2007 8:11 a.m.
CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 14, 2007)

105 KAR 1:270. Special federal income tax withholding.


STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(y)(a) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.552, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements. Those administrative regulations are necessary to implement the provisions of Pub. L. 102-346 regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a determination to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member [or beneficiary who is the spouse of the member], the retirement office shall file all the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments to the member(individuals) requesting payment.

(2)(a) The member [or beneficiary who is the spouse of the member] shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and return it to the retirement office.

(2)(b) If the member [or beneficiary who is the spouse of the member] intends to have the funds rolled over directly into an IRA or other plan, the member [or beneficiary who is the spouse of the member] shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The refund of contributions shall not be processed until the completed Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is returned by the member [or beneficiary who is the spouse of the member] to the retirement office.
Section 2. (1) Upon receipt of a completed [the] Form 6010, Estimated Retirement Allowance, on which the member [or beneficiary, who is the spouse] has selected the actuarial refund or partial lump sum [a payment option payable for a period of less than ten (10) years], the retirement office shall mail the member [or beneficiary, who is the spouse] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], along with the Special Tax Notice Regarding Payments.

(2)a The member [or beneficiary, who is the spouse] shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], and return it to the retirement office.

(b) If the member [or beneficiary, who is the spouse] intends to have the funds rolled over directly into an IRA or other plan, the member [or beneficiary] shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the member [or beneficiary, who is the spouse] shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], is returned to the retirement office.

Section 3. (1) Upon receipt of a completed [the] Form 6010, Estimated Retirement Allowance, on which the beneficiary who is the surviving spouse of the deceased member has selected the actuarial refund or sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is the surviving spouse of the deceased member the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)a The beneficiary who is the surviving spouse of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the beneficiary who is the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the beneficiary who is the surviving spouse of the deceased member shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 4. (1) Upon receipt of a completed [the] Form 6010, Estimated Retirement Allowance, on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)a The beneficiary who is not the surviving spouse of the deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 5.[3] (1a) If the alternate payee is eligible for a lump sum portion of the member's contribution account pursuant to [under] a qualified domestic relations order, the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee.

(b) If the alternate payee is eligible to select a payment option and selects an actuarial refund or partial lump sum [payment option payable for a period of less than ten (10) years], a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee.

(2)a The alternate payee shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], and return it to the retirement office.

(b) If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], is returned to the retirement office.

(3)a The payment of an actuarial refund or partial lump sum pursuant to [a payment option of less than ten (10) years] [under] a qualified domestic relations order shall be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum and Monthly Payments], is returned to the retirement office.

(b) If the payment is a portion of the member's contribution account and the alternate payee does not return the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, within thirty (30) days of receipt of the form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds.

Section 6. (1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 720(1), may file a Form 4527, Certification by a [Qualified Public Safety Employee] and Request for an Exception to the ten (10) percent Early Distribution Penalty in IRC 720(1), to avoid the ten (10) percent early distribution tax penalty if [when] electing to receive an actuarial refund, lump sum refund, partial lump sum refund, or the ten (10) years certain option.

(2) The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a [Qualified Public Safety Employee] and Request for an Exception to the ten (10) percent Early Distribution Penalty in IRC 720(1), with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.

Section 7.[4-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", May 2007 [June 2006][7[][Kentucky-Retirement Systems];

(b) ["Special Tax Notice Regarding Payments", May 2007 [January 2006][7[][Kentucky-Retirement Systems];

(c) ["Form 6010, Estimated Retirement Allowance", July 2004 [September 2003][7[][Kentucky-Retirement Systems].]
Section 3. (1) Except as provided in subsection (2) of this section, the member's entire interest shall be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(2) If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(a) Except as provided in paragraph (d) of this subsection, if the member's surviving spouse is the member's sole designated beneficiary, [then] distributions to the surviving spouse shall begin by the later of:
   1. December 31 of the calendar year immediately following the calendar year in which the member died[,] or
   2. [by] December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);[if later.]  

(b) If the member's surviving spouse is not the member's sole designated beneficiary, [then] distributions to each [the] designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.[1]

(c) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death; or

(d) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member's death but before distributions to the surviving spouse begin, the paragraphs [Section 2(2)(b) and (c) of this subsection shall apply as if the surviving spouse were the member and paragraph (a) of this subsection shall not apply; Sections 2(2)(a) shall not apply in this situation].

(3) [a For purposes of subsection [Sections 2(2)(a) through (c) of this section and Section 5 of this administrative regulation, distributions shall be considered to begin on the member's required beginning date.

(b) If subsection [Section 2(2)(d) of this section applies, distributions shall be required to begin on the date distributions are required to begin to the surviving spouse pursuant to subsection [under Section 2(2)(a)] of this section.

(c) If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection [under Section 2(2)(a)] of this section, the date distributions are considered to begin shall be [is] the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to [under] the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one (1) year;

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 4 or 5 of this administrative regulation;

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(d) Payments shall increase only as follows:
   1. By the annual percentage increase provided for pursuant to [under] KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852;  
   2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in this section [Section 4 of this administrative regulation] dies, or if the beneficiary is the member's spouse and they divorce, as provided in KRS 61.853(10);  
   3. To provide cash refunds of employee contributions upon the member's death; or
   4. To pay any increased benefits that result from a plan amendment.

(2) [a The amount that shall be distributed on or before the
member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin pursuant to Section 3(2) (under Section 3(2)(a) or (b)) of this administrative regulation, shall be [the] payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date.

Section 5. (1)(a) If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death shall not [at any time] exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in Q&A-2 of 25 C.F.R. (section 1.401(a)(9)-6.

(b)(7) [of the treasury regulations.] If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in paragraph (a) of this subsection [the preceding sentence] shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2)(a) Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime shall not exceed the applicable period certain for the member pursuant to [under] the uniform lifetime table established in 25 C.F.R. [set forth in the section] 1.401(a)(9)-9 [of the regulations] for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be [the] distribution period for age seventy (70) under the uniform lifetime table established in 25 C.F.R. [set forth in the section] 1.401(a)(9)-9 [of the regulations] plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date.

(c) If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain shall not exceed the longer of the member's applicable distribution period, as determined pursuant to [under] this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined pursuant to [under] the joint and last survivor table established in 25 C.F.R. [set forth in the section] 1.401(a)(9)-9 [of the regulations], using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of the member's [his or her] interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time established in Section 3(2)(a) [described in Section 3(2)(a)] or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(3) If the member dies before the date distribution of the member's [his or her] interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, then this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined without regard to Section 3(2)(a) [280(a)] of this administrative regulation.

[Section 7-KRS 61.645(9)(a) and this administrative regulation implement the statutory requirements of IRC Section 4975(e)(7) and are meant to be a reasonable good faith interpretation of those statutory requirements.]

RANDY OVERSTREET, Chair
APPROVED BY AGENCY. May 17, 2007
FILED WITH LRC: June 15, 2007 at 11 a.m.
CONTACT PERSON: J. Enc Wampler, Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 690-8800 ext. 5501, fax (502) 696-8801.

KENTUCKY INFRASTRUCTURE AUTHORITY
(As Amended at ARR'S, August 14, 2007)


RELATES TO: KRS 224A.011, 224A.040, 224A.112, 224A.113, 224A.270

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) authorizes the authority to promulgate and administrative regulations for loans and grants. Also KRS 224A.113 authorizes the authority to promulgate regulations to implement KRS 224A.111, 224A.1115, and 224A.112. This administrative regulation acts specifically to repeal [200-KAR-17:010, and] 200 KAR 17:060. [The provisions in 200-KAR-17:010 are no longer applicable to the program as a result of changes in the program's objectives.] KRS 224A.270 was repealed, therefore the provisions in 200 KAR 17:060 are no longer necessary.

Section 1. [The following administrative regulations are hereby repealed:

(1)200-KAR-17:010, Guidelines for Infrastructure Revolving Fund; and

(2)200 KAR 17:060, Guidelines for Solid Waste Revolving Fund. Is hereby repealed.

JODY HUGHES, Executive Director
APPROVED BY AGENCY: July 14, 2007
FILED WITH LRC: June 14, 2007 at 4 p.m.
CONTACT PERSON: John E Covington, III, Financial Analyst, Kentucky Infrastructure Authority, 1024 Capitol Center Dr., Suite 340, Frankfort, Kentucky 40601-5646, phone (502) 573-0260, fax (502) 573-0157.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARR'S, August 14, 2007)

707 KAR 1:290. Free appropriate public education.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200

To 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 [requires] mandates that the Kentucky Board of Education adopt rules and administrative regulations for proper administration of [the] general [education] programs. KRS 156.035 authorizes [sets forth the authority of] the Kentucky Board of Education to implement any [of] acts of Congress appropriating funds to the states and to provide for the appropriate apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412, [and] 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for providing a free, appropriate, public education for children identified as eligible for special education services.

Section 1. Free Appropriate Public Education (1) AN LEA shall make a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within its district's boundaries who have not received a high school diploma, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year. FAPE shall be provided to each child with a disability even though the child has not failed or been retained in a course and is advancing from grade to grade based on the child's unique needs and by the child's disability. An IEA LEA shall not be required to provide FAPE to a student eighteen (18) years old or older who is placed in an adult correctional facility if, in the educational placement prior to placement in the correctional facility, the student was not identified as a child with a disability and did not have an IEP.

(2) AN LEA shall be responsible for ensuring the rights and protections under 707 KAR Chapter 1 are given to children with disabilities referred to or placed in private schools and facilities by that LEA.

(3) State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.

(4) If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than the LEA, the LEA shall ensure the services are provided without delay even if there is a delay in the payment for those services.

Section 2. Residential Placement. If it is determined necessary by an ARC to place a child with a disability for educational purposes in a private residential educational program, the program, including nonmedical care and room and board, shall be provided by the LEA which convened the ARC. AN LEA may fulfill its responsibility under this section by providing the services directly or by contracting for those services.

Section 3. Proper Functioning of Hearing Aids. An LEA shall ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly. AN LEA shall ensure that the external components of surgically implanted devices of children with disabilities are functioning properly; however, an [a] LEA shall not be responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted.

Section 4. Program Options. AN LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services, and curriculum as described in the Kentucky Program of Studies, 704 KAR 3.303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, and career and technical education, and other educational services.

Section 5. Nonacademic Services. AN LEA shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's IEP, to provide all children with disabilities the nonacademic and extracurricular services and activities that give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include:

(1) Counseling services;
(2) Athletics;
(3) Transportation;
(4) Health services;
(5) Recreational activities;
(6) Special interest groups or clubs sponsored by the LEA;
(7) Referrals to agencies that provide assistance to individuals with disabilities; and
(8) Employment of students, including both employment by the LEA and assistance in making outside employment available.

Section 6. Physical Education. (1) [Unless the provisions of subsection (2) of this section apply, an LEA shall make available to every child with a disability:]

(a) [Physical education services, specially designed on the child's IEP necessary;]
(b) [The opportunity to participate in the regular physical education program available to children without disabilities.]
(2) AN LEA is not required to make available physical education services to a child with a disability if:

(a) The child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education, or
(b) [The child needs specially designed physical education as prescribed in the child's IEP, or
(e) The LEA enrols children without disabilities and does not provide physical education to children with disabilities in the same grades.]

Section 7. Assistive Technology. (1) AN LEA shall ensure that assistive technology devices or assistive technology services, or both, as defined in 707 KAR 1:280(2) or (4) or 1:260(5) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

Section 8. Extended School Year Services. AN LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making the determination, the LEA shall not:

(1) Limit the provision of extended year services to a particular category(s) of disability; or
(2) Unilaterally limit the type, amount, or duration of those services.

Section 9. Prohibition of Mandatory Medication. AN LEA personal shall not require a child to obtain a prescription for a substance covered by schedules I, II, III, IV, or V [ha-seen: 592(e)] of the Controlled Substance Act (21 U.S.C. 812[2]), as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding student's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

Section 10. Records Regarding Migratory Children with Disabilities. AN LEA shall cooperate with the efforts of the United States Department of Education under the Child Left Behind Act to transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398.
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).

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: April 10, 2007
FILED WITH LRC: April 11, 2007 at noon
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 14, 2007)

707 KAR 1:300. Child find, evaluation, and reevaluation.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [mandates that the] Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] these programs. KRS 156 035 authorizes [sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws]. 20 U.S.C. 1407 and 1412, 1400-1419 and 34 C.F.R. 300.100 [Part 200] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for conducting child find activities and procedures for evaluation and reevaluation of children with disabilities.

Section 1. Child Find Requirements (1) An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child
(a) Whose age is three (3) to twenty-one (21);
(b) Who resides in a home, facility, or residence within the LEA's geographical boundaries, including children with disabilities who attend private schools located within the LEA boundaries attending private schools; children who are highly mobile such as migrant children, and homeless children as described in 704 KAR 7.090, children who are wards of the state or are in state custody, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;
(c) Who is either in or out of school, and
(d) Who may need special education and related services.
(2) For preschool age children with disabilities, an LEA must ensure a smooth and effective transition from the early intervention program to preschool.
(3) Each LEA shall participate in transition planning conferences for children with disabilities served by early intervention programs.

Section 2. Coordinated Early Intervening Services. A LEA may conduct early intervening services for students from kindergarten through fourth grade (with particular emphasis on students in kindergarten through grade three) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education. An [in order to provide these coordinated early intervening services] (a) LEA shall not spend more than fifteen (15) percent of the money received under IDEA Part B to provide these coordinated early intervention services.

Section 3. Referral System. (1) An LEA shall have a referral system that explains how referrals from district or nondistrict sources will be accepted and acted upon in a timely manner.
(2) The referral system shall be conducted in such a manner as to prevent inappropriate or disqualifying referrals based on race or ethnicity of children in special education by ensuring that each [child] child has been provided appropriate instruction and intervention services prior to referral [intervention].
(3) The LEA shall ensure that:
(a) Prior to or as a part of the referral process, the child is [well] provided appropriate, relevant research-based instruction and intervention services in regular education settings, with the instruction provided by qualified personnel, and
(b) Data-based documentation of repeated assessments of achievement or measures of behavior is collected and evaluated at reasonable intervals, reflecting systematic assessment of student progress during instruction, the results of which were provided to the child's parents.
(4) If the child has not made adequate progress after an appropriate period of time during which the conditions in subsection (3) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.

Section 4. (5) Evaluation and Reevaluation Procedures. (1) An LEA shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services. The results of the evaluation shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.
(2) Tests and other evaluation materials used to assess a child shall be
(a) Selected and administered so as not to be discriminatory on a racial or cultural basis; and
(b) Provided and administered in the child's native language or other mode of communication most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
(3) Screenings conducted by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for specially designed instruction and related services and shall not need parental consent.
(4) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has a disability and needs specially designed instruction and related services, rather than measuring the child's English language skills.
(5) (4) A variety of assessment tools and strategies shall be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum described in the Kentucky Program of Studies, 704 KAR 3:303.
(6) (5) A standardized test given to a child shall:
(a) Have been validated for the specific purpose for which it is [they are] used;
(b) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test; and
(c) Be conducted under standard conditions unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.
(7) (6) Tests and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general inte...
(b) [unless] The parents or teacher do not request a reevaluation.

(18) [no reevaluation is necessary to determine whether the child continues to be a child with a disability, unless the parent requests reevaluation.

(46) An LEA shall ensure a reevaluation, unless the parent and the LEA agree that a reevaluation is unnecessary. A reevaluation [assessment] may consist of the review described in subsection (1), [§2][H] of this section, and is conducted at least every three (3) years to determine:

(a) The present levels of performance and educational needs of the child;
(b) Whether the child continues to need special education and related services; and
(c) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.

A reevaluation shall not be conducted more than once a year unless the parent and the LEA agree otherwise.

(19) [An LEA shall evaluate a child with a disability in accordance with this administrative regulation before determining that the child is no longer a child with a disability. The LEA shall not be required to conduct an evaluation as described in this section before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a free, appropriate public education.

(20) For students who graduate or age out of the program, the LEA shall provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.

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)

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 14, 2007)

707 KAR 1:310. Determination of eligibility.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.220 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires mandates that the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] these programs. KRS 156.035 authorizes [see forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412, 1400-1444 and 34 C.F.R. 300.100 [Part 300] requires that policies and procedures be adopted to assure the apportionment and

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disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the determination of eligibility for special education of children who have disabilities.

Section 1. Determination of Eligibility. (1) Upon analysis of intervention and assessment data [completion of the tests and other evaluation materials], the ARC shall determine whether the child is a child with a disability as defined in Section 1(9) of [Who needs-one (3) or more of the eligibility categories as defined in] 707 KAR 1 280 to the extent that specially designed instruction is required in order for the child to benefit from education. An LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) A child shall not be determined to be eligible if the determinant factor for that eligibility determination is [a lack of] a lack of appropriate instruction in reading, including the essential components of reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. [Section] 6301 [et seq.]; or a lack of appropriate instruction in math, or limited English proficiency, and reading instruction in reading or math, or limited English proficiency, and the child does not otherwise meet eligibility criteria.

(3) An evaluation shall not be required before the termination of a child's eligibility due to graduation with a regular high school diploma or exceeding the age eligibility for FAPE.

(4) In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:

(a) Response to scientific, research-based interventions;
(b) Vision, hearing, and communication screenings;
(c) Parental input;
(d) Test results and achievement tests;
(e) Teacher recommendations;
(f) Physical condition;
(g) Social or cultural background;
(h) Adaptive behavior; or
(i) Behavioral observations.

(i) Reading fluency skills;
(j) Mathematics calculation;

(2) The child fails to achieve a rate of learning to meet sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3 303 in one or more of the areas identified in subparagraphs (a) [paragraph (a)] or (b) [paragraph (b)] of this Section when assessed based on the child's futures-1 response to scientific, research-based interventions.

(c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability. Using appropriate assessments consistent with 707 KAR 1 300, Chapter 4.

(3) The ARC shall identify a child as having a specific learning disability if deficits in achievement are [the severe discrepancy in achievement and intellectual ability] the primary reason of:

(a) Visual hearing, or motor impairment;
(b) Mental disability as defined in 707 KAR 1 280(37);
(c) Emotional-behavioral disability; or
(d) [Environmental] Cultural factors; or
(e) Limited English proficiency.

(4) At least one (1) team member other than the child's regular education teacher shall observe the child in the learning environment, including the regular classroom settings, to document academic performance and behavior in the area of difficulty [with academic performance in the regular classroom setting]. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.

(5) For a child suspected of having a specific learning disability, the ARC must consider, as part of the evaluation, data that demonstrates that:

(a) Prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, including that the instruction was delivered by qualified personnel;

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parent.

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(7) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (a) and (b) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.

(8) An ARC shall develop documentation of a specific learning disability [a learning disability (LD) written report]. This documentation [report] shall contain a statement of:

(a) Whether the child has a specific learning disability;
(b) The basis for making that determination;
(c) The relevant behavior noted during the observation;
(d) The relationship of that behavior to the child’s academic functioning;
(e) The educationally relevant medical findings, if any;
(f) Whether the child does not achieve commensurate with the child’s age and ability; [not a severe discrepancy between achievement and ability that is not correctable without special education and related services]; and

(g) Whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas described in subparagraph (3)(a)(2)(i) of this section [207 KAR 1:310, Section 207 KAR 1:310(1)] that require special education and related services.

(i) The instructional strategies used and the student-centered data collected based on the child’s [his] response to scientific, research-based intervention [approaches].

(9) This documentation shall include notification to the child’s parents concerning the policies regarding:

(a) The amount and nature of student performance data that is collected and the general education services that are provided;
(b) Strategies for increasing the child’s rate of learning; and
(c) The parents’ right to request an evaluation.

(10) Each ARC member shall certify in writing whether the report reflects the member’s conclusions [his] conclusion. If it does not reflect the member’s [his] conclusion, the team member shall submit a separate statement presenting the member’s [his] conclusions.

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).

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
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707 KAR 1:320. Individual education program.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.290 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [mandates that] the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] those programs. KRS 156.035 authorizes [sets forth the authority of] the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1400-1467 and 1412 [1400-1467] and 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

Section 1. Individual Education Programs. (1) An LEA shall ensure [he] an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child’s resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

(3) At the beginning of the school year, an LEA shall have an IEP in effect for each child with a disability within [in] its jurisdiction [at the beginning of each school year].

(4) An LEA shall ensure the IEP:

(a) Is in effect before specially designed instruction and related services are provided to a child with a disability; and
(b) Is implemented as soon as possible following an ARC meeting.

(5) An LEA (or state agency responsible for developing the child’s IEP) shall ensure that there is no delay in implementing a child’s IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

(6) An LEA shall ensure that

(a) The child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;
(b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child’s IEP; and
(c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

(7) An IEP shall be in place for all eligible children aged three (3) through five (5).

Section 2. ARC Meetings. (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) An ARC shall not have to be convened in order to make minor, nonprogrammatic changes to an IEP, such as typographical errors, incorrect directory information about the student, e.g. date of birth, grade, address, or school, etc., and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, nonprogrammatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made when ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

(3) An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:

(a) The child is [will be] evaluated, and
(b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

(4) [9] Within this sixty (60) school-day period, an LEA shall
ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

(5) The sixty (60) school day timeline shall not apply in the following situations:
   (a) If the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agrees to a specific time when the evaluation will be completed; or
   (b) If the parent repeatedly fails or refuses to produce the child for evaluation.

(6) (4) An LEA shall ensure that the ARC:
   (a) Reviews each child’s IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and
   (b) Revises the IEP in accordance with 34 C.F.R. 300.324(b)(1)(ii), [as appropriate to address:
      1. Any lack of expected progress toward the annual goals;
      2. Any lack of expected progress in the general curriculum, if appropriate;
      3. The results of any reevaluation;
      4. Information about the child provided by or to the parents;
      5. The child’s anticipated needs; and
      6. Other matters.]

Section 3. ARC Membership. (1) An LEA shall ensure that the ARC for each child with a disability includes:

(a) The parents of the child;

(b) Not less than one (1) [A] regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general curriculum for same aged peers;

(c) Not less than one (1) [A] special education teacher of the child or a special education teacher who is knowledgeable about the child’s suspected disability or, if appropriate, at least one (1) special education provider of the child;

(d) A representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;

(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team described in paragraphs (b) through (d) of this subsection;

(f) An individual who has knowledge or special expertise regarding the child’s suspected disability or, at the discretion of the parent or the LEA;

(g) Related services personnel, as appropriate; and

(h) The child, if appropriate.

(2) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member’s area of curriculum or related services is not being modified or discussed in the ARC meeting.

(3) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEAs agree in writing prior to the ARC meeting to wait the attendance of that member even though the member’s area of curriculum or related services will be discussed or modified if:

(a) The parent and the LEA consent in writing to the exclusion, and

(b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

(4) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4(3) and (4) of this administrative regulation, the child shall be invited to the ARC. If the child does not attend the ARC meeting, the LEA shall take other steps to ensure that the child’s preferences and interests are considered. A public agency that is likely to be responsible for providing or paying for transition services shall also be invited to the extent appropriate and with the consent of the parent or the child, if the child is emancipated adult. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

(5) If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1310, Section 2(1), in addition to the personnel listed in subsection (1) of this section.

(6) If the purpose of the ARC meeting is to discuss transition from the early intervention program into the preschool program, the LEA shall invite a representative of the early intervention program to the initial transition ARC meeting if the parent requests.

Section 4. Parent Participation. (1) An LEA shall ensure that one (1) or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate.

(2) An LEA shall send an ARC meeting invitation to the parent which includes:

(a) The purpose,

(b) Time;

(c) Location of the meeting;

(d) Who will be in attendance; and

(e) Notice of the meeting that the parents may invite people with knowledge or special expertise of the child to the meeting; and

(f) Notice of the meeting that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request it.

(3) If the child is in the eighth grade year, or has reached the age of fourteen (14) years at least fourteen (14) years of age, the invitation shall state [indicate] that a purpose of the meeting will be the development of statement for the need for transition services for [of] the child and state [indicate] that is child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

(4) For a child with a disability, beginning no less than later than the IEP that will be in effect when the child turns sixteen (16) years of age if determined to be appropriate by the ARC.

(5) An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

(6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he should attend. The LEA shall have a record of its attempts to arrange a mutually-agreed-on time and place, which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits to the parent’s home or place of employment and the results of those visits.

(7) When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

(8) An LEA shall give the parent a copy of the child’s IEP at no cost to the parent.

Section 5. Contents of IEP. (1) An ARC shall consider in the development of an IEP:

(a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
(b) The results of the initial or most recent evaluation of the child; and
(c) As appropriate, the results of the child's performance on any general state or districtwide assessment programs; and
(d) the academic, developmental, and functional needs of the child.

(2) An ARC shall:
(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
(b) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
(c) In the case of the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
(d) Consider the communication needs of the child;
(e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
(f) Consider whether the child requires assistive technology.

(3) All the factors listed in this section shall be considered, as appropriate, in planning and in considering any proposed changes to the child's IEP.

(4) Once the ARC has considered all the factors listed in this section the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

(5) A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:
(a) Positive behavioral interventions and strategies for the child;
(b) Supplementary aids and services; and
(c) Program modifications or supports for school personnel that will be provided related to.

(6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.

(7) The IEP for each child shall include:
(a) A statement of the child's present levels of academic achievement and functional (educational) performance, including how the child's disability affects the child's involvement and progress in the general curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
(b) A statement of measurable annual goals, including academic and functional goals, designed [benchmarks or short-term objectives related to],
1. Meet [Meeting] the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and
2. Meet [Meeting] the child's other educational needs that result from the disability.
(c) A LEA's procedures may determine the use of benchmarks or short-term objectives for a child's IEP.

(8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:
(a) Advance appropriately toward attaining the annual goals;
(b) Be involved and make progress in the general curriculum;
(c) Participate in extracurricular and other nonacademic activities; and
(d) Be educated and participate with other children with and [or] without disabilities.

(9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.

(10) An IEP shall contain a statement of any individual accommodations [modifications] to be provided to the child in order to participate in the state or districtwide assessment. These accommodations [modifications] shall be based on the requirements contained in 703 KAR 5:070, Inclusion of special populations in the state-required assessment and [see] accountability programs.

(11) If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision.

(12) An IEP shall include the projected date of the beginning of the services and modifications listed on the IEP and the anticipated frequency, location (whether regular or special education), and duration of the services and modifications.

(13) An IEP shall include a statement of:
(a) How the child's progress toward meeting the annual goals will be measured; and
(b) When periodic reports on the progress the child is making toward meeting the annual goals, which may include the use of quarterly or other periodic reports concurrent with the issuance of reports required under KNEA Section 3, [see] accountability programs.

(14) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

(15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of this administrative regulation.

Section 6. Program for Students who Transfer. (1) If a child with a disability transfers between LEAs [school-districts] within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP or develops, adopts, and implements a new IEP.

(2) If a child with a disability transfers from an LEA outside Kentucky to an LEA within Kentucky Between-school-district to another LEA within Kentucky Between-school-district within the same academic year from out-of-state, and had an IEP in effect and the LEA in the other [in-attended] state, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP. The previous IEP shall be provided in consultation with the parents.

(3) To facilitate the transition of a child who transfers, the receiving LEA shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA. [How the parents will be regularly informed at least as often as the school or LEA informs parents of the progress of all children.

(4) A parent shall be informed if:
(a) The child's progress toward the annual goals, and
(b) The extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.
Section 2. [6] Transition Services. (1) In the child's eighth grade year or when the child has reached the age of fourteen (14) years, and in accordance with the child's Individualized Learning Plan (as required by 704 KAR 3:050 [Beginning at age fourteen (14)], or earlier [younger] if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of the transition services needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement shall be updated annually.

(2) By the child's 18th birthday, the IEP shall include:
(a) Appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills; and
(b) The transition services (including the course of study) needed to assist the child in reaching these goals. [For a child beginning at age thirteen (13), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of needed transition services for the child, including, if appropriate, a statement of interagency responsibilities or any needed linkages.]

(3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

(4) At least one (1)-year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of his rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.

(6) If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the LEA (or the state agency responsible for developing the child's IEP) shall review the AR to identify alternative strategies to meet the child's transition objectives set out in the IEP.

(5) [6] A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

Section B. [7] Private School Placements by the LEA. (1) Prior to [an-LEA] placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend the meeting, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(4) If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places [or-refers] a child with a disability in or refers a child to a private school shall ensure that the child:
(a) Is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;
(b) Is provided an education that meets the standards of the LEA, including general curriculum standards; and
(c) Has all the rights of any child with a disability served by the LEA.

Section 3. [8] IEP Accountability. (1) An LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child in achieving the IEP objectives, or benchmarks listed in the IEP.

(2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR 6:70 (Chapter 6).

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

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).

KEVIN M. NOULD, Interim Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2007
FILED WITH LRC: June 14, 2007 at 11 a.m.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 14, 2007)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.220 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [mandates] the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] these programs. KRS 156.035 authorizes [seeks] the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1490 et seq.] and 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:
(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and
(b) Participate in all ARC meetings concerning his child.
(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:
(a) Detailed records of telephone calls made or attempted and the results of those calls;
(b) Copies of correspondence sent to the parents and any responses received; or
(c) Detailed records of visits made to the parent's home or place of employment and the results of these visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, [scheduling] or unscheduled conversations on issues which may include:
(a) Teaching methodology [if those issues are not addressed in
the child's IEP);

(b) Lesson plans [if those issues are not addressed in the child's IEP];

(c) Coordination of service provision [if those issues are not addressed in the child's IEP]; or

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation [Upon receiving the request], the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) If a parent requests [The parent's request for] an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, [shall be subject to the following]:

(a) The LEA shall be given the opportunity to conduct a complete reevaluation of the child prior to the request;

(b) Upon receiving the request, the LEA shall, without unnecessary delay;

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;

(4)[(e)] The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under paragraph (a) of this subsection [3] of this section while waiting for a response from a parent; and

(5) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(6)[(a)] A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(7)[(1)] If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(8)[(6)] If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

(9)[(6)] If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. Notice to Parents [of Procedural Safeguards]. (1) An LEA shall provide written notice to the parents of a child with a disability in accordance with 34 C.F.R. 300.503 [a reasonable time] before the LEA:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) This notice shall include:

(a) A description of the action proposed or refused by the LEA;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 C.F.R. 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(3) The notice shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of the [that translation].

Section 4. Procedural Safeguards Notice. (1) [44] A copy of the procedural safeguards notice (including [e.g.,] parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

(a) Upon initial referral or parent request for evaluation;

(b) Upon the receipt of the first state written complaint;

(c) Upon the receipt of the first filing of a due process hearing in a school year;

(d) In accordance with the discipline procedures in which a decision is made to remove a student, which [shall] constitutes a change in placement, because of a violation of the code of student conduct;

(e) Upon request by a parent;

(f) Upon referral to a due process hearing;

(g) Upon receipt of a request for a due process hearing;

(h) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. [section] 300.504.

Section 5. 44 Parental Consent. (1) An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If the [a] parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this administrative regulation and/or through mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300. Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);

(b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or

(c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received,
(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) If the parent of a child refuses to give consent for the provision of educational services, the LEA shall provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

(6) The LEA shall request consent before conducting a [fell] reevaluation of a child with a disability. If the parent refuses consent, the LEA must pursue the reevaluation by using the procedures in this administrative regulation (707-KAR 1:340) for mediation, dispute resolution meeting, or a due process hearing.

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

(a) It made reasonable efforts to obtain such consent and followed the procedures in subsection (4) of this section (Section 1441) of this administrative regulation to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation.

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in Sections 9 and 11 of this administrative regulation and the LEA shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:

(a) Fails to respond or refuses to consent to a request for evaluation;

(b) Fails to respond or refuses to consent to a request for services; or

(c) Refuses to consent to a reevaluation. If the parent of a child fails to respond or refuses to consent to a request for evaluation, or to consent for services or refuses to consent for a reevaluation:

(a) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in 707 KAR 1:240, Sections 9 and 11; and

(b) The LEA shall not be required to convene an ARC meeting or develop an IEP.

Section 6. Representation of Children. (1) If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent. (The whereabouts of the parent cannot be determined after reasonable efforts have been made to contact the parent.)

(b) The rights of the parents have been terminated in accordance with state law.

(c) The rights of the parents to make educational decisions have been terminated by a court in accordance with state law and the consent for initial evaluation has been given by (has) someone appointed by the judge to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent, shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who make the definition of "parent," it shall have the definition of "parent" in Section 1441(a) through (d) of 707 KAR 1:280 (former 207-KAR 1:340) and 707 KAR 1:280(a) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) An IAI LEA shall ensure the rights of a child are protected by appointing (designating as) an educational representative for the child. ALEAs shall appoint a surrogate parent to make educational decisions for the child if:

(a) No Individual can be identified as a parent (parent's) as defined in 707 KAR 1:280 (can't be identified);

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parent;

(c) The child is a ward of the state;

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431 (fate-seal).

(4) The LEA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, is listed in subsection (d) of this section, such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other agency that is involved in the education or care of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child;

(c) Shall have knowledge and skills that ensure adequate representation of the child;

(d) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent;

(e) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (c) of this section; and

(f) Until a surrogate parent can be appointed that meets all the requirements of this section.

(7) An LEA shall maintain records of the assignment of a surrogate not more than thirty (30) days after the date of the determination by the LEA that the child needs a surrogate.

(8) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(9) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An IAI LEA shall notify the child with a disability and the parents of the transfer of the rights.

Section 7. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R 300.151 through 300.153; 300.160 through 300.162;

(a) The Kentucky Department of Education shall have [Ask, day before six(60) days after a complaint is filed is filed to carry out an independent investigation, if necessary.

(b) The Kentucky Department of Education and the LEA shall each have an opportunity to submit additional information about any allegations in the complaint.

(c) The [An opportunity-for] the LEA shall have an opportunity to respond to the complaint including, at least:

1. A proposal to resolve the complaint and

2. An opportunity for the parent who filed the complaint
and the LEA to voluntarily engage in mediation;
(d) The department shall [a] review of all relevant information; and
(e) The department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.
(2) Any organization or individual including someone from outside the state may file a signed written complaint under the administrative regulations.
(3) The complaint shall include:
(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA administrative regulations;
(b) The facts on which the statement is based;
(c) A signature and contact information for the complainant;
(d) Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431 (et seq.);
(e) Name of the school the child is attending;
(f) A description of the nature of the problem, including facts related to the problem;
(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.
(4) The party filing the complaint shall forward a copy to the LEA.
(5) The complainant, parent, or the LEA shall have a right to accept the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.
(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section only if exceptional circumstances exist or if the parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution.
(2) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:
(a) Technical assistance activities;
(b) Negotiations; or
(c) Corrective actions (for an initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by requesting a due process hearing or using the mediation procedures).
(3) Parental consent shall not be required for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain the consent, and the child's parent has failed to respond.
(a) The records of the telephone calls made or attempted and the results of those calls;
(b) Copies of correspondence sent to the parents and any responses received; and
(c) Records of the visits made to the parent's home or place of employment and the results of these visits.
Section 9. [6-] Mediation Rights. (1) The mediation process, if chosen, shall:
(a) Be voluntary;
(b) Not be used to deny or delay a parent's right to a due process hearing under Sections 8[6] and 11[7] of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and
(c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.
(2) The Kentucky Department of Education shall maintain a list of qualified mediators who shall:
(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;
(4) Any LEA or state agency described in 34 C.F.R. section 300.194 or 2. Any part of the Kentucky Department of Education that provides direct services to a child who is subject to the mediation process;
(b) Be chosen at random for the mediation process; and
(c) Not have a personal or professional conflict of interest.
(3) The Kentucky Department of Education shall bear the cost of the mediation process.
(4) The sessions in the mediation process shall be
(a) Scheduled in a timely manner not to exceed sixty (60) days; and
(b) Held at a location that is convenient to both parties to the dispute.
(5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:
(a) Sets forth the resolution and a timeline in which it shall be implemented;
(b) States that all discussions that occurred in the mediation process shall be confidential; and
(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.
(6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
Section 10. Dispute Resolution. (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall (at least) also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.
(2) The purpose of this meeting is:
(a) To allow the parents to discuss their due process hearing request;
(b) To discuss the facts that formed the basis of the request; and
c) To give the LEA an opportunity to resolve the complaint.
(3) This meeting shall not take place if the parent and the LEA agree in writing to waive the meeting or agree to use the mediation process.
(4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:
(a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
(b) Is enforceable in any state court of competent jurisdiction or in a district court of the United States.
(5) The dispute resolution agreement may be voided by either party within thirty (30) days of the agreement's execution.
(6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.
(7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 [the resolution of the due process hearing] shall
begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) (subsection (14)) of this section.

(8) The failure of the parent who filed [filed] the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the
(a) [The] parties have jointly agreed to waive the resolution process or use mediation; or
(b) The LEA has not received the due process complaint or the satisfaction of the parent within thirty (30) days of the receipt of the due process hearing request in which case the due process hearing may occur.

(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

(10) The LEA shall (must) keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:
(a) Detailed records of telephone calls made or attempted and the results of those calls;
(b) Copies of correspondence sent to the parents and any responses received and
(c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

(11) If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the forty-five (45) day due process hearing timeline in 34 C.F.R. 300.515.

(12) The forty-five (45) day timeline for the due process hearing in 34 C.F.R. 300.515 starts the day after one (1) of the following events:
(a) Both parties agree to waive the resolution meeting;
(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or
(c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

Section 11. [2] Hearing Rights. (1) The parent of a child with a disability is the only party representing the child, or the LEA that files a [files the] request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:
(a) The name of the child;
(b) The address of the residence of the child;
(c) The name of the school the child is attending;
(d) A description of the nature of the problem; and
(e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", that meets [contains] these requirements to assist parents in filing a request for a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) of this section [above]. This notice shall be provided to the other party and to the Kentucky Department of Education. The Kentucky Department of Education shall not deny or delay a parent's right to a due process hearing for failure to provide the notice in 707-KAR 1-340, Section (7)(f) and (e).

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

Section 12. [3] Appeal of Decisions. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in 707-KAR 1-340, Sections 14 and 15 of this administrative regulation [10 and 12], during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting, the child involved in the hearing or appeal shall remain in the child's [the] current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who [that] is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

[Section 10. Representation of Children. (1) An LEA shall ensure the rights of a child are protected by determining an educational representative for the child. An LEA shall appoint a surrogate parent to make educational decisions for the child if:
(a) No parent(s) as defined in 707-KAR 1-280 can be identified;
(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents;
(c) The child is a ward of the state;
(d) An LEA shall have a procedure for determining whether a child needs a surrogate parent for assigning a surrogate parent to the child. The educational representative of the child shall have all the rights afforded parents under Part B of IDEA and 707-KAR, Chapter 1 to make decisions about educational issues for a child and to give written consent when necessary under administrative regulation.

(3) An LEA shall have a procedure for selecting surrogates. A surrogate:
(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
(b) Shall not have an interest that conflicts with the interests of the child;
(c) Shall have knowledge and skills that ensure adequate representation of the child.

(4) A surrogate parent may be an employee of a private agency that provides noneducational care for the child if that person meets the standards in this section. A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(5) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(6) When a child with a disability reaches the age of majority, all cases under 707-KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 367 in a court of law. A LEA shall notify the child with a disability and the parents of the transfer of the rights.]

Section 13. [4] Discipline Procedures. (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) School personnel may remove a student with a disability who violates a code of student conduct from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).
(3) School personnel may remove a student with a disability from the student’s current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for serious incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability (as described in Section 14 of the administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

(5) After a child with a disability has been removed from the child’s current placement for ten (10) school days in the same school year, educational services as described in subsection (6)(a) and (b) of this section (below) shall be provided during any subsequent days of removal.

(6) A child with a disability who is not removed from the child’s current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) An [A] LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(9) After a child with a disability has been removed from the child’s current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child’s teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.

(10) If a removal is a change in placement because of disciplinary removals, the child’s ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

Section 14. Manifestation Determination (1) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child’s ARC, as determined by the LEA and the parent, shall meet with the child and, at least, the following persons to review all relevant information in the student’s file, including the child’s IEP, any teacher observations, test results, collected data, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or

(b) If the conduct in question was the direct result of the LEA’s failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child’s disability if the ARC determines that either of the conditions (conditions) in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child’s disability, the ARC shall:

(a) Conduct a functional behavioral assessment, unless:

(b) The LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child, or

(5) Review the behavioral intervention plan, if one had already been developed and modify it, as necessary, to address the behavior; and

(6) Return the child to the placement from which the child was removed unless:[2] the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(7) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child’s disability, if the child:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

(8) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with [as continued in Section 4 of this administrative regulation] that describes the appeal process under Section 14 of this administrative regulation.

The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 14(4), 10(4), and 14(5) of this administrative regulation.

Section 15. Appeals from Placement Decisions. (1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 14 or 14(5) of this administrative regulation or the manifestation determination, or an IEP that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 8 and 11.

(2) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to [an] subsection (1) of this section.

(3) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

(a) Return the child to the placement from which the child was removed, or

(b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

(4) When an appeal filing under this section has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed, and

(c) Shall result in a determination within ten (10) school days after the hearing.

If the child with a disability is removed for more than ten (10) school days during a school year, a change of placement shall be considered to have occurred for purposes of disciplinary actions.

(2) To the extent removal would be applied to children without disabilities, school personnel may remove a child with a disability
from the child’s current placement for not more than a total of ten (10) school days for a violation of school rules.

(3) A child’s ARC may order a change in placement of a child with a disability to an appropriate interim educational setting if the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, if:

(a) The child comes or possesses a weapon to or at school; a school function; or school premises; or

(b) The child knowingly possesses or uses illegal drugs or sells or facilitates the sale of a controlled substance while at school or a school function. An illegal drug shall not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the authority of any other provision of the Controlled Substances Act, 21 U.S.C. section 812(c) or under any other provision of federal law.

(4) No later than ten (10) business days after commencing an action that results in a change of placement, the LEA shall convene an ARC to:

(a) Develop a plan for conducting a functional behavior assessment, if an assessment has not been conducted;

(b) Develop and implement a behavioral intervention plan if a functional behavioral assessment has already been conducted, or

(c) Review and modify the assessment and the plan, as necessary, to address the behavior; if a functional behavioral assessment has been conducted, and a behavioral intervention plan has been developed.

(5) As soon as practicable after developing the functional behavioral assessment described in subsection (4)(a) of this section, and completing the assessments required by the plan, the LEA shall convene an ARC to develop appropriate behavioral interventions to address the behavior and shall implement these interventions.

(6) A due process hearing officer may order a change in placement of a child with a disability to an appropriate alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

(a) Determines that the LEA has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child’s current placement;

(c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by the school personnel who have consulted with the child’s special education teacher, meets the requirements contained in subsection (7) of this section.

(7) An interim alternative educational setting in which a child is placed shall:

(a) Enable the child to continue to progress in the general curriculum;

(b) Enable the child to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in the IEP; and

(c) Include services and modifications to address the behavior to prevent the behavior from recurring.

Section 11: Manifestation Determination Review. (1) If an action is contemplated that will result in a change of placement for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the LEA that applies to all children:

(a) Not later than the date on which the decision to take action is made, the parents shall be notified of the decision and provided with a copy of procedural safeguards; and

(b) Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take action is made, a review by the ARC and other qualified personnel shall be conducted of the relationship between the child’s disability and the behavior subject to the disciplinary action.

(2) In conducting the review, the ARC may determine that the behavior of the child was not a manifestation of the child’s disability if:

(a) The ARC first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation procedures and results, relevant information supplied by the parents, observation of the child and the child’s IEP and placement;

(b) After the review of this information, the child’s IEP and placement are reviewed in relationship to the behavior subject to the disciplinary action to determine if the IEP and placement were appropriate and the specially designed instruction and related services, supplementary aids and services, and the behavior interventions were provided consistent with the child’s IEP and placement; and

(c) The ARC determines if the child’s disability impaired the ability of the child to understand the impact and consequences of the behavior and if the child’s disability impaired the ability of the child to control the behavior.

(3) If the ARC determines that any of the standards in subsection (2) of this section are not met, the behavior shall be considered a manifestation of the child’s disability.

(4) If the ARC identifies any deficiencies in the child’s IEP or placement or in its implementation, the LEA shall take immediate steps to remedy those deficiencies.

(5) If, after the manifestation determination review, the ARC determines the behavior was not a manifestation of the child’s disability, the relevant disciplinary procedures applicable to all children may be applied in the same manner in which they would be applied to children without disabilities.

(6) If the LEA initiates disciplinary procedures applicable to all children, it shall ensure that all special education and disciplinary records are transmitted to the school personnel making the final determination regarding the disciplinary action as to the child with disabilities.

(7) A parent may request a due process hearing to contest the decision reached in a manifestation determination review or with any decision regarding placement under this section. The hearing shall be conducted in an expedited manner.

Section 12: Challenge to Placement in an Interim Alternative Educational Setting and Manifestation Determination. (1) If a parent requests a hearing to challenge the placement of a child in an interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting until the decision is final or until the expiration of the time period for the placement, whichever occurs first, unless the parent and the LEA agree otherwise.

(2) If an interim alternative educational setting and school personnel propose to change the child’s placement after expiration of the time period during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child’s placement prior to the interim alternative educational setting) unless the school personnel maintain that it is not feasible for the child to be in the current placement, in which case the LEA may request an expedited due process hearing.

(3) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the LEA, may assert any of the protections provided for in this administrative regulation if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Section 16: [Res] Basis of Knowledge. (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

(b) The behavior or performance of the child demonstrates the need for those services, in accordance with 707 KAR 1-280;

(c) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1.330, or

(d) The teacher of the child, or other personnel of the LEA,
has expressed concern about a pattern of [the] behavior or performance of the child directly to the director of special education or [to] other supervisory personnel of the LEA [in accordance with the LEA's child find or special education referral system].

(2) An LEA shall not be deemed to have knowledge that a child is [may be] a child with a disability if, after [as a result of] receiving information that the child may have a disability, the LEA:
(a) The LEA conducted an evaluation and determined the child was not a child with a disability;
(b) The LEA [or] determined an evaluation was not necessary and provided notice to the parents of these determinations; or
(c) The parents refused to consent to an evaluation or refused initial services.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

Section 17. [44:] Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

Section 15. State Compliant Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.660 through 300.662:
(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;
(b) An opportunity-by-the-complainant and the LEA to submit additional information about any allegation in the complaint;
(c) A review of all relevant information; and
(d) A written decision addressing each allegation in the complaint containing the findings of fact and conclusions of the reasons for the final decision.
(e) For any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(2) The complaint shall include:
(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 KAR Chapter 4 or IDEA regulations;
(b) The facts on which the statement is based;
(c) Information indicating that the violation did not occur more than one (1) year prior to the date of filing of the complaint; unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred more than three (3) years prior to the date of the complaint;
(d) The complaint, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision;
(e) The Kentucky Department of Education shall allow an extension of time limit under subsection (1)(a) of this section only if exceptional circumstances exist;
(f) The complaint, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. The appeal shall be filed within fifteen (15) business days of the receipt of the decision;
(g) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply,
(a) Technical assistance activities;
(b) Negotiations; or
(c) Corrective actions.


(2) This material document may be inspected, copied, or obtained subject to applicable copyright law, at the Division of Exceptional Children Services, Department of Education, Capitol Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2007
FILED WITH LRC: June 14, 2007 at 11 a.m.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 14, 2007)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.220 to 157.229 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires mandates that the Kentucky Board of Education adopt rules and administrative regulations for proper administration of the general carryout these programs. KRS 156.035 authorizes [state that the authority-er] the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1400-eet seq.] and 34 C.F.R. 300.100 [Part-300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. The administrative regulation establishes requirements for making placement decisions about children with disabilities.

Section 1. Placement Decisions. (1) An LEA shall ensure that to the maximum extent appropriate, children with disabilities, including children placed by the LEA in public or private institutions or other care facilities, are educated with children who are nondisabled. The LEA shall ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if education in the regular education environment with the use of supplementary aids and services cannot be satisfactorily achieved due to the nature or severity of the disability.

(2) An LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(3) The continuum shall include the alternative placements of:
(a) Inclusion in regular classes;
(b) Special classes;
(c) Special schools;
(d) Home instruction, and
(e) Instruction in hospitals and institutions.

(4) The LEA shall make provision for supplementary services to be provided in conjunction with regular class placement.

(5) In determining the educational placement of a child with a
disability, the LEA shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.

(6) A child's placement shall be:
   (a) Determined at least annually;
   (b) Based on the child's IEP; and
   (c) As close as possible to the child's home.

(7) Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he would attend if nondisabled.

(8) In selecting the least restrictive environment, consideration shall be given to any potential harmful effects on the child or on the quality of services that he needs.

(9) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(10) In providing or arranging for the provision of nonacademic and extracurricular services and activities, an LEA shall ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.

Section 2. Class Size (1) An LEA shall provide special education [according to caseloads for special classes] for each child with a disability in accordance with the following maximum caseloads for special classes as follows:

(a) Emotional-behavior disability is eight (8);
(b) Functional mental disability is ten (10);
(c) Hearing impairment is six (6);
(d) Mild mental disability [for primary] is fifteen (15) [and for secondary is fifteen (15)];
(e) Multiple disabilities is ten (10);
(f) Orthopedic impairment is sixteen (16);
(g) Other health impairment is sixteen (16);
(h) Specific learning disability for primary is ten (10) and for secondary is fifteen (15), and
(i) Visual impairment is ten (10).

(2) An LEA shall provide special education [according to class size for resource classes] for each child with a disability in accordance with the following maximum caseloads for resource classes as follows:

(a) Emotional-behavior disability is eight (8);
(b) Functional mental disability is eight (8);
(c) Hearing impairment is eight (8);
(d) Mild mental disability is ten (10);
(e) Multiple disabilities is eight (8);
(f) Orthopedic impairment is ten (10);
(g) Other health impairment is ten (10);
(h) Specific learning disability is ten (10); and
(i) Visual impairment is eight (8).

(3) Children with disabilities that meet the definition of autism; deaf-blindness; developmental delay for ages six (6), seven (7), and eight (8); and traumatic brain injury shall be served in regular classes, special classes, or resource classes as determined by the ARC.

(4) If a teacher of exceptional children provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) children with disabilities for secondary, and fifteen (15) children with disabilities for primary.

(5) Pursuant to KRS 157.360, if caseload for special classes or caseload for resource classes exceeds the maximum specified in this section for thirty (30) days, an LEA shall submit a waiver request to the Kentucky Department of Education.

Section 3. Caseload for Resource Teachers. Caseloads [caseload] for resource teachers shall refer [refer] to the maximum number of student records [records] a teacher may [can] be assigned. An LEA shall make those assignments based on the following:

(1) Emotional-behavioral disability is fifteen (15);
(2) Functional mental disability is ten (10);
(3) Hearing impairment is eight (8);
(4) Mild mental disability for primary is fifteen (15) and for secondary is twenty (20),
(5) Multiple disabilities is ten (10);
(6) Orthopedic impairment is twenty (20);
(7) Other health impairment is twenty (20);
(8) Specific learning disability for primary is fifteen (15) and for secondary is twenty (20), and
(9) Visual impairment is ten (10), and
(10) Speech language pathologist caseload limits as contained in KRS 334A.190.

This is to certify that the chief state school officer has reviewed and recommended the administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Intern Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY. April 10, 2007
FILED WITH LRC: April 11, 2007 at noon
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 14, 2007)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [mandate that] the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] these programs. KRS 156.030 authorizes [see former authority of] the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1400 et seq.] and 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes standards for school districts to make appropriate educational services available to children with disabilities who have been enrolled in private schools by their parents.

Section 1. Children with Disabilities Enrolled in Private Schools by Their Parents when FAPE is at Issue. (1) An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1:340 [Chapter I].

(2) If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral from the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private
placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to an LEA.

(3) The amount of financial reimbursement described in subsection (2) of this section may be reduced or denied if: (a) The most recent ARC meeting prior to the removal of the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;

(b) If at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child, the parents did not give written notice to the LEA of the information described in paragraph (a) of this subsection at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child;

(c) Prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for that evaluation;

(d) There is a judicial finding that the actions taken by the parents were unreasonable.

(4) The amount of financial reimbursement shall not be reduced or denied for the failure to provide the notice described in subsection (2) of this section if the parent: (a) The parent is illiterate;

(b) Compliance with the notice requirement would likely result in physical or serious emotional harm to the child;

(c) The school prevented the parent from providing the notice; or

(d) The parent had not received notice from the LEA of his obligation to provide this notice.

Section 2. Child Find for Children with Disabilities Enrolled by Their Parents in Private School. (1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including those attending private schools (residing within the boundaries of the LEA). These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky or the state in which the private schools that they attend are located) in the LEA's child find activities.

(2) The LEA shall maintain in its records and provide to KDE: (a) The number of children evaluated under this section;

(b) A list of those children determined to be children with disabilities under this section; and

(c) The number of children served under this section.

(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.

(4) Child find activities shall be completed in a timely manner. The LEA shall not consider the costs, including the cost of medical services incurred by the LEA's child find activities, when determining its obligation under Section 4(3) of this administrative regulation.

Section 3. Parental Consent. (1) If a parent of a child who is privately placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the LEA:

(a) Shall not use the procedures in 707 KAR 1-340 for mediation, dispute resolution meeting, or a due process hearing;

(b) Shall not require the consideration of the child as eligible for services under this administrative regulation (707 KAR 1-370); and

(c) Shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place of employment visits, and the results of these efforts.

Section 4. Basic Requirements. (1) A LEA shall provide special education and related services to parentally placed private school children with disabilities in accordance with the procedures found in Section 5 of this administrative regulation (Section 6-101), to the extent consistent with the number and location of those children enrolled in private schools located within the school district boundaries. (2) A service plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA to receive special education and related services under Section 5 of this administrative regulation.

(3) To meet this requirement, the LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 C.F.R. 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.

Section 5. Consultation. (1) A LEA shall consult in a meaningful and timely fashion with private school representatives, and their representatives of parents or representatives of parents of parentally-placed school children with disabilities during the design and development of special education and related services.

(a) The child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials shall be informed of the process;

(b) The determination of the proportionate share of federal funds, including how calculated;

(c) How the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(d) How, where, and by whom special education and related services will be provided including:

1. A discussion of the types of services, including direct services and alternate service delivery methods;

2. How special education and related services will be apportioned if funds are not sufficient to serve all parentally-placed private school students with disabilities; and

3. How and when decisions will be made and

(e) How the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through contracts, if the LEA disagrees with the views of the private school representatives.

(2) When timely and meaningful consultation has occurred, the LEA shall obtain a written affirmation signed by the representative of the private school children's parents or representatives of parents of parentally-placed school children with disabilities that the child count figure within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the KDE.

Section 6. (Section 4, Service Plans. (1) An LEA shall consult with representatives of private schools in developing how to conduct the child find count of the number of private school children with disabilities. The child count shall be used to determine the amount that the LEA shall spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(2) The amount to be spent shall be an amount that is the same proportion of the LEA's total enrollment as the number of private school children with disabilities aged three (3) to twenty-one (21) residing within the boundaries of the LEA to the total number of children with disabilities aged three (3) to twenty-one (21) residing within the boundaries of the LEA. This same formula shall be applied to children aged three (3) through five (5).

(3) Expenditures for child find activities shall be considered in determining the amount the LEA is required to spend under this section.

(4) A private school child with a disability shall not be an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public
Section 8. [6-] Due Process Procedures. (1) The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Sections 7, 9, 10, 11, 12 shall not apply to complaints that an LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 7[49]. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

(2) A private school official has the right to submit a state written complaint to the LEA and the Kentucky Department of Education as outlined in 707 KAR 1:340, Section 7, for allegations that the LEA:

(a) Did not engage in timely and meaningful consultation, or
(b) Did not give due consideration to the views of the private school official.

(3) If the private school official submits a state written complaint, the official shall provide the basis of the alleged noncompliance by the LEA.

(4) If the private school official is dissatisfied with the final decision of the Kentucky Department of Education, the official may submit a complaint to the United States Department of Education. If such a complaint is filed with the secretary, the Kentucky Department of Education shall forward the appropriate documentation to the Secretary.

Section 9. [7-] Restrictions on Serving Nonpublic Students. (1) An LEA shall not use funds under Part B of IDEA to finance the extension of instruction in a private school or otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

(a) The needs of a private school;

(b) The general needs of the students enrolled in the private school.

(2) An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.

(3) An LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the LEA performs the services under the supervision and control of the LEA.

(4) The LEA may keep title to and exercise continued administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.

(5) The LEA shall ensure that the equipment, and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

(6) The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.

(7) The LEA shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.

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).

KEVIN M. NOLAND, Interim Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 10, 2007
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Kentucky Board of Education
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(As Amended at ARRS, August 14, 2007)

707 KAR 1:380. Monitoring and recovery of funds.


NECESSITY, FUNCTION, AND CONFORMITY. KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [waives that the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of] that in general carry out these programs. KRS 156.235 authorizes [seeks for the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the appropriate apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1400 et seq.] and 34 C.F.R. 300.100 [Part 300] requires that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes the procedures that will be followed by the Department of Education in the event it is necessary to take corrective action on behalf of children with disabilities.

Section 1. Monitoring (1) The Kentucky Department of Education shall conduct monitoring of LEAs and other agencies that provide educational services to children with disabilities on a regular basis to determine compliance with federal and state requirements. Off-site monitoring shall include review of the following:

(a) LEA's self-assessment,
(b) Reports, including count and data tables, and performance reports;
(c) [1305 complaints and due process hearings;
(d) [1305r] Finance reports; and
(e) [1305r] Documentation indicating inclusion of children with disabilities in the accountability system.

(2) Off-site monitoring shall identify any areas of noncompliance that indicate the need for further investigation, including an on-site review.

(3) On-site monitoring may [shall] include:

(a) Review of individual children's records, including records of children served by private or state-operated schools,
(b) Interviews with staff;
(c) A survey of parents;
(d) Visits in schools and classrooms, and
(e) Other activities, including review of financial records.

(4) Following an on-site or on-site review, the Kentucky Department of Education shall issue a written report. Deficiencies specified in the report shall be the basis for the LEA to develop a corrective action plan (CAP) for review and approval by the Kentucky Department of Education. Prior to the development of the CAP, the LEA shall have the opportunity to submit additional information to verify or clarify issues related to the report. Each CAP shall be monitored and enforced by the Kentucky Department of Education.

(5) A CAP shall be submitted to the Kentucky Department of Education no later than thirty (30) business days after the LEA receives the report of noncompliance. The CAP shall include:

(a) A statement of the matter to be corrected; and
(b) The steps the LEA shall take to correct the problem and document compliance.

(6) Within thirty (30) business days of receiving the CAP, the Kentucky Department of Education shall notify the LEA of the status of the CAP. If the Kentucky Department of Education rejects the CAP, the LEA shall have fifteen (15) thirty (30) business days to submit a new CAP.

(7) A CAP approved by the Kentucky Department of Education shall be monitored and shall be an official document requiring the LEA to meet the specified activities. The Kentucky Department of Education may initiate further sanctions during the time period specified in the CAP unless requested by the LEA.

(8) Any noncompliance verified by monitoring shall be corrected within twelve (12) months from the date of the notification to the LEA of the noncompliance.

Section 2. Special Education Program Found Noncompliant (1) The Kentucky Department of Education shall ensure that each LEA or other state agency responsible for providing the child's education complies with the LEA eligibility requirements contained in IDEA, 34 C.F.R. Part 300. To fulfill this obligations, the Kentucky Department of Education may implement the procedures established in this administrative regulation.

(2) A special education program may be found noncompliant through deficiencies identified in:

(a) Off-site or on-site monitoring that were not corrected by a corrective action plan;
(b) A [Review of applications;
(c) An decision issued in complaint investigations after appeals have been exhausted;
(d) [1305r] Decisions issued in due process hearings or by the Exceptional Children Appeals Board that have become final after the appeal rights have been exhausted;
(e) Review of other data routinely collected by the Kentucky Department of Education.

Section 3. Causes for Imposing Sanctions. (1) The Kentucky Department of Education shall employ progressive sanctions until compliance is achieved, if an LEA:

(a) Fails to comply with a CAP, including not implementing the activities in an approved CAP;
(b) Fails to comply with the final decision in a complaint investigation after appeals have been exhausted, or the decision of a due process hearing officer or the Exceptional Children Appeals Board that has become final after appeal rights have been exhausted;
(c) Fails to manage the special education program in compliance with state and federal law;
(d) Fails to manage funds in compliance with state and federal law;
(e) Obtains funds through deception including falsifying application information for the purpose of obtaining funds; or
(f) Has been brought before a court of competent jurisdiction and found in noncompliance with state and federal special education requirements after appeal rights have been exhausted.

(2) Sanctions may be imposed if [when] an LEA fails or refuses to correct an identified deficiency. The Kentucky Department of Education shall give notice at least ten (10) school days prior to instituting actions related to sanctions. The Kentucky Department of Education shall remain in contact with the appropriate LEA staff during the imposition of sanctions until the deficiencies are remedied.

Section 4. Sanctions. (1) The Kentucky Department of Education shall employ intensive assistance for at least two (2) years period, including providing consultation, training, and technical assistance, or assigning a special education mentor, to remedy deficiencies and obtain voluntary compliance before imposing sanctions beyond a corrective action plan (CAP).

(2) The Kentucky Department of Education shall employ less severe sanctions before more severe sanctions unless the LEA is in compliance. Progressive sanctions may include the following:

(a) Conditional approval of IDEA funds. If verifiable progress is not made in implementing a CAP, conditional funding shall be imposed. Conditions and timelines for continuing to receive IDEA...
funds shall be stated in the application approval letter or an attachment. Conditional funding may be employed for more than one year before imposing the next sanction, unless the LEA fails or refuses to meet the conditions or timelines. This sanction shall be lifted when the Kentucky Department of Education verifies compliance;

(b) Withholding of payments of IDEA funds. If an LEA fails or refuses to meet the conditions or timelines in the conditional approval letter, IDEA funds may be withheld by the Kentucky Department of Education. The Kentucky Department of Education shall make no further payments to the LEA until the Kentucky Department of Education verifies that compliance has been achieved. If the LEA makes no effort to correct the deficiency within sixty (60) calendar days of withholding of IDEA funds, further sanctions may be imposed pursuant to appropriate provisions in KRS 156.132. Withholding shall remain in effect during the pendency of any additional sanctions; and

(c) Withholding of Support Education Excellence in Kentucky (SEEK) add-on funds. SEEK add-on funds for exceptional children shall be withheld in trust as required in KRS 157.224. This sanction shall be lifted when the Kentucky Department of Education verifies compliance with substantive special education requirements; or [and]

(d) Other actions available under state and federal law shall be employed as circumstances warrant.

(3) The Kentucky Department of Education may conduct an off-site or on-site review to validate compliance.

Section 5. Opportunity for a Hearing. Prior to the withholding of IDEA or SEEK add-on funds, the LEA shall be provided notice and an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 6. Child Count Audit. (1) Child count figures submitted to the Kentucky Department of Education for the purpose of receiving funds under IDEA shall be subject to an audit validating the count. The Kentucky Department of Education shall conduct the child count audits prior to withholding funds pursuant to Section 4(2)(b) if the LEA is in violation of the administrative regulation.

(2) If an LEA counts more children on its December 1 child count than are actually being served, or counts children who are ineligible to be counted for funding, the LEA shall reduce its child count or return the funds received for each misclassified child.

(3) The reduction may be initiated by
(a) The LEA upon recognizing an error exists; or
(b) The Kentucky Department of Education through an on-site or off-site validation of the child count figures

(4) Notice and an opportunity for a hearing under KRS Chapter 13B shall be provided before recovery of funds.

(5) Annually, the Kentucky Department of Education shall review and, as needed, select LEAs for a child count audit. An [A] LEA may be selected for audit based on the following:

(a) Recurring noncompliances identified through off-site or on-site monitoring;

(b) Recurring substantiated complaints or final decisions from due process hearings or the Exceptional Children Appeals Board on similar issues;

(c) Failure to comply with a CAP within the specified timelines, or with the final decision in a complaint investigation after appeals have been exhausted, or with a hearing or appeal decision after appeals rights have been exhausted within specified timelines;

(d) Increases or decreases of total child counts, changes in categorical areas, or amendments to the original IDEA-B child count report that cannot be justified by district-supplied data like annual child count data and district-wide enrollment data or other district-supplied sources of data:

(e) Unusual child count data, such as [e-g.], more than fifteen (15) percent of the total school population reported as having disabilities, no change in numbers from year to year, high numbers of low incidence populations, or unusually low percentages of children with disabilities when compared to similar LEAs; or

(f) Previous audits resulting in reductions in addition to the presence of any of the items listed in paragraphs (a) through (e) of this subsection.

(6) Prior to initiating a child count audit, the Kentucky Department of Education shall:

(a) Notify the LEA in writing of the pending audit and request a roster of children by school, teacher, age, and individual disability category as reported on the specific count being audited;

(b) Verify the number of children on the roster with the number reported on the LEA's child count; and

(c) Randomly select from the roster the educational records to be audited.

(7) The Kentucky Department of Education shall conduct an on-site record review based on the standards in 707 KAR Chapter 1 and analyze the data collected to determine the number of records out of compliance.

(8) The Kentucky Department of Education shall prepare a draft audit report which includes:

(a) The reason for the child count audit;

(b) The date the audit was conducted;

(c) The total number of records reviewed;

(d) An analysis of the data obtained during the audit;

(e) The specific reductions by disability; and

(f) Notice that the LEA has thirty (30) business days from the date of the report to submit additional information for each child to demonstrate compliance.

(9) The LEA may request copies of the data collected and used to produce the findings in the audit report and submit additional information for each child to demonstrate compliance. If the LEA submits additional information to demonstrate compliance, the Kentucky Department of Education shall have thirty (30) business days from receipt of the information to review the documentation and issue a final report.

(10) Within thirty (30) business days of the date of the final audit report, if applicable, the LEA shall submit to the Kentucky Department of Education an amended child count report and a CAP to address deficiencies identified during the audit.

(11) The Kentucky Department of Education shall certify the reduced count and submit a correction to the U.S. Department of Education and the Kentucky Department of Education's Division of Finance.

(12) The IDEA grant award for the fiscal year affected shall be recalculated and:

(a) If the child count reduction affects the current year's project then the amount of the recovery shall be subtracted from the original allocation and shall not be sent to the LEA the following year;

(b) If the reduction in grant award is for a year in which funds have already been expended, the LEA's grant shall be reduced by the following year in an amount to a maximum sum that shall not disrupt current delivery of instructional services; or

(c) If the reduction affects an application for the fiscal year, the LEA shall be notified of the reduction of the recalculated grant award for the following year.

(13) Follow-up audit. The Kentucky Department of Education shall conduct a follow-up audit at the time the CAP is scheduled for completion. The Kentucky Department of Education shall verify that deficiencies have been corrected. If the follow-up visit verifies that the LEA has completed all CAP activities and no areas of noncompliance are identified, the Kentucky Department of Education shall issue a final report.

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).

KEVIN M. NOLDEN, Intern Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 10, 2007
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CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(As Amended at ARRS, August 14, 2007)  

922 KAR 1:300. Standards for child-caring facilities.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) requires the secretary for [authorize] the cabinet [for Health and Family Services] to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 authorizes [requires] the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care and service for child-caring facilities.

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined at KRS 273.161(7).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Case" means an individual child or family being provided services by a social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient’s freedom of movement and is not a standard treatment for the patient’s medical or psychiatric condition.

(6) "Child" is defined at KRS 199.011(4) and includes 600 020(8) and may include:

(a) A person age eighteen (18) or older whose commitment to a cabinet has been extended or reinstated by a court [an extension or reinstatement of commitment in accordance with KRS1, 610.110(6) or 620.140(1)(d)]; or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2 015.

(7) "Child-caring facility" is defined at KRS 199.011(6).

(8) "Child-placing agency" is defined at KRS 199.011(7).

(9) "Child-care program" means the method of delivering a child-caring service.

(10) "College or university" means;

(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the United States Department of Education, Office of Postsecondary Education.

(b)(b) For a Kentucky institution, one that is licensed by the Kentucky Board of Secondary Education or the Kentucky Board for Proprietary Education.

(c) For an out-of-state institution, one that is licensed in its home state if licensure is required in that state.

(11) "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(12) "Corporal physical discipline" means reasonable physical discipline in accordance with [is defined at KRS 199.640(5).

(13) "Department" means the Department for Community Based Services.

(14) "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(15) "Direct child-care staff" means an employee or volunteer providing face-to-face care and supervision of a child.

(16) "Division" means the Division of Licensed Child Care.

(17) "Emergency child care" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(18) "Emergency child care center" is defined at KRS 600.000(3).

(19) "Emergency shelter child care facility" means a child-caring facility that meets the requirements of 922 KAR 1:300.

(20) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(21) "Group home" is defined at KRS 199.011(10).

(22) "Independent living services" means services provided to an eligible child, as described in Section 8 of this administrative regulation, to assist the child in the transition from childhood to living independently.

(23) "Individual treatment plan" or "ITP" means a plan of actions developed and implemented to address the needs of a child.

(24) "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(25) "Institution" is defined at KRS 199 011(11).

(26) "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(27) "Long-term child care facility" means a child-caring facility that meets the standards established in 922 KAR 1:390.

(28) "Residential child care facility" means a child-caring facility that meets the standards established in 922 KAR 1:390, Section 4.

(29) "Residential treatment program" means a residential child-caring facility that meets the treatment program requirements of 922 KAR 1:390, Section 4.  

(30) "Service coordination" means a service provided by the individual on the treatment team who has responsibility for the coordinated implementation of the child's ITP.

(31) "Sex crime" is defined at KRS 17.500(9).

(32) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(33) "Therapeutic hold" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(34) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a time limited period, in order to permit the child to regain control over his behavior.

(35) "Treatment" means Individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(36) "Treatment team" means a representative group of people who provide services to the child and the child's family.

(37) "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

(38) "Youth wilderness camp" means a specific program of a child-caring facility that is designed to provide an outdoor experience consistent with a child's ITP.

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by
(b) An emergency shelter child-care facility with treatment, also governed by 922 KAR 1:380, Section 3;
(c) A residential child-care facility, also governed by 922 KAR 1:390, including:
1. A group home; and
2. An institution.
(d) A residential treatment program, also governed by 922 KAR 1:390, Section 4, including:
1. A crisis intervention unit, also governed by 922 KAR 1:390, Section 5;
2. A group home, also governed by 922 KAR 1:390, Section 7;
3. An institution; and
(e) A youth wilderness camp program, also governed by 922 KAR 1:460.
(2) Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-care facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-care facility shall
(a) Be administered as established in 922 KAR 1:305; and
(b) Based upon the services provided, meet the requirements of this administrative regulation and 922 KAR 1:380, 922 KAR 1:390, or 922 KAR 1:460.
(2) Board of directors.
(a) The child-care facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.
(b) The board of directors shall:
1. Consist of as least seven (7) members;
2. Meet at least quarterly;
3. Cause minutes of each meeting to be taken and kept in written form;
4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local laws,
5. Have procedures in place to assure that its staff receives ongoing training as defined in subsection (6)(c) of this section;
6. Obtain a criminal records check of prior convictions of the executive director prior to employment; and
7. Approve a mission statement delineating:
   a. The purpose;
b. Objective; and
c. Scope of service to be provided.
(3) Executive director.
(a) Duties of the executive director shall be determined by the board of directors.
(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.
(c) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.
(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.
(e) The criteria and process of the quarterly evaluation shall be approved by the board.
(4) Staff qualifications.
(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:
1. A master's degree in a human services field from a college or university, supplemented by two (2) years of work experience in business administration or management of a human services program related to working with families and children; or
2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years work experience in management of a human services program related to working with families and children.
(b) A treatment director or person employed by the child-care facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall [possess at least];
1. Hold at least a master's degree in a human service discipline; and
2. Within two (2) years of the effective date of this administrative regulation, have at least five (5) years experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:
   a. Supervision;
   b. Evaluation; and
   c. Monitoring of:
      (i) Treatment program;
      (a) Social work;
      (a) Other treatment staff;
      (c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.
   (d) A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of the duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.
   (g) [A master's degree in the human services area from a college or university including the areas of:
   a. Social work;
   b. Sociology;
   c. Psychology;
   d. Guidance and counseling;
   e. Pastoral counseling and religion; and
   2. Two (2) years work experience in a human services field.
   (h) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:
   1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or
   2. A high school diploma, or an equivalency certificate, and at least five (5) years work experience in a child-caring facility.
   (i) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.
   (j) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.
   (k) A child-care facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.
   (5) Staffing requirements.
   (a) The child-caring facility shall have:
   1. A written policy describing a child-to-direct-child-care-staff ratio that is consistent with the staff-to-child ratios required in paragraph (b) of this subsection; and
   2. An explanation of the assignment of staff in order to:
      a. Ensure the health and safety of a child; and
      b. Implement the child-caring program.
   (b) Staff-to-child ratios for each type of facility shall be as follows:
   1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children at all times.
   2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children at all times.
   3. A residential child-caring facility:
      a. One (1) staff member to ten (10) children age six (6) and over; and
      b. One (1) staff member to five (5) children under age six (6).
   4. A residential child-caring facility with treatment:
      a. One (1) staff member to six (6) children; and
      b. One (1) staff member to twelve (12) children during sleeping
hours.
5. A crisis intervention unit:
   a. One (1) staff member to four (4) children and
   b. One (1) staff member to six (6) children during sleeping
   hours.
6. A group home:
   a. One (1) staff member to four (4) children; and
   b. One (1) staff member to accompany a child while away from
      the home.
7. An institution: one (1) staff member to ten (10) children.
8. A youth wilderness camp program to include:
   a. A base camp:
      i. One (1) staff member to four (4) children age eleven (11)
         and twelve (12) years old; and
      ii. One (1) staff member to six (6) children age thirteen (13)
         and above, and
   b. A field program, for which two (2) staff members shall be on
      location at all times:
      i. One (1) staff to [for] three (3) children age eleven (11) and
         (12) years old;
      ii. One (1) staff to [for] four (4) children age thirteen (13) and
         above;
   c. Group size, including staff, shall not exceed more than
      twelve (12) at one (1) time;
   d. In a mixed gender group, one (1) woman and one (1) man,
      with one (1) staff member remaining awake during sleeping
      hours;
   e. A staff-to-child ratio shall be based on the age of the
      youngest child, and
   f. A volunteer shall not be included in the staff-to-child ratio.
   g. There shall be at least one (1) staff member present in each
      child-caring facility building if a child is present.
   h. At least one (1) staff member certified in first aid and
      cardiopulmonary resuscitation shall be on the premises, if a child
      is present.
   i. The child-caring facility shall have a written work schedule
      and policy that provides for utilization of relief staff.
   j. The child-caring facility must employ an individual who is
      responsible for the overall planning and coordinating of social
      services for [to] a family and child.
   k. Social services staff shall not carry a caseload of more than
      fifteen (15) children and their families.
   l. Personnel policy:
      a. A child-caring facility shall have and comply with a written
         personnel policy and procedure.
      b. An employee of the child-caring facility shall be at least
         eighteen (18) years of age.
   m. The employment of an individual shall be governed by KRS
      17.165, with regard to a criminal record check.
   n. A new criminal record check shall be completed at least every
      two (2) years on each employee or volunteer.
   o. An employee under indictment or legally charged with a
      violent or sex crime as defined in KRS 17.165 shall be immediately
      removed from contact with a child within the child-caring facility
      until the employee is cleared of the charge.
   p. Each employee or volunteer shall submit to a check of the
      central registry described by 922 KAR 1:470. An individual listed
      on the central registry shall not be a volunteer at or be employed
      by a child-caring facility.
   q. Each licensee shall report to the cabinet and each child-
      caring facility employee or volunteer shall report to the licensee or
      facility’s director, an incident that occurs subsequent to the most
      recent central registry check, if the employee or volunteer:
      1. Is the subject of a cabinet child abuse or neglect investiga-
      tion [for]
      2. Has been found by the cabinet or a court to have abused or
         neglected a child; or
      3. Has been indicted for or charged with a violent or sex
         crime as defined in KRS 17.165.
   r. An individual shall not be left alone in the presence of a
      child if a central registry check has not been completed.
   s. Determination by the cabinet of risk of potential harm by an
      employee to a child in a child-caring facility shall result in:
      1. Investigation of the employee for evidence of child abuse or
         neglect; and
      2. The removal of the employee from direct contact with a child
         [pending]:
         a. For the duration of the investigation; and
         b. Pending completion of the administrative appeal process in
            accordance with 922 KAR 1:320.
   t. A current personnel record shall be maintained for each
      employee, that includes the following:
      1. Name, address, Social Security number, date of employment,
         and date of birth;
      2. Evidence of a current registration, certification, licensure,
         and college credentials, if required by the position;
      3. Record of ongoing participation in an agency staff develop-
         ment program as specified in paragraphs (n) and (o) of this
         subsection;
      4. Record of performance evaluation;
      5. Criminal records check as established in paragraph (c) of
         this subsection;
      6. Documentation of a central registry check completed every
         two (2) years in accordance with 922 KAR 1:470;
      7. Personnel action; and
      8. Application for employment, [and] resume, or contract.
   u. A child-caring facility shall retain an employee personnel
      record for at least five (5) years after termination of employment.
   v. An employee shall document compliance with a requirement
      for meeting state or national professional standards, as set forth in
      the job description.
   w. The child-caring facility shall have a record of participation
      and successful completion of an ongoing staff and volunteer
      development program.
   x. The staff development program shall be under the supervi-
      sion of a designated staff member; and
   y. Full-time direct child care staff shall have at least forty
      (40) hours, and part-time direct child care staff shall have at least
      twenty-four (24) hours, of training specific to the tasks [task] to
      be performed and of annual training in the following
      1. Emergency and safety procedure;
      2. Principle and practice of child residential care;
      3. Behavior management, including de-escalation training;
      4. Physical management [Therapeutic] for a child-caring
         facility using the technique,
      5. First aid; and
   z. A volunteer who functions as a professional or direct staff
      member without compensation shall meet the same general
      requirements and qualifications.
   (q) A child-caring facility using physical management [thera-
      peutic] shall:
      1. Develop and maintain clearly-written policy and procedure
         governing the use of physical management [therapeutic] of a
         child, including a requirement for a de-escalation plan, in accord-
         ance with 922 KAR 1:320, Section 4;
      2. Require a staff member who conducts physical management
         [therapeutic], to complete at least sixteen (16) hours of annual
         training in approved methods of de-escalation and physical man-
         agement [therapeutic] from a nationally-recognized accredita-
         tion organization approved by the cabinet, as part of the annual
         training established in paragraph (c) of this subsection, to include:
         a. Assessing physical and mental status, including signs of
            physical distress;
         b. Assessing nutritional and hydration needs;
         c. Assessing readiness to discontinue use of the intervention; and
         d. Recognizing when medical or other emergency personnel
            are needed.
   (r) The program director shall review and analyze instances of
      physical management [therapeutic] in order to:
      1. Assess compliance with Section 5(2)(f) through (h) of this
         administrative regulation and the child-caring facility policy;
      2. Provide documentation of a plan of action to prevent injury
         to a child or staff as a result of the use of physical management
         [therapeutic]; and
      3. Review each incident no later than one (1) working day after
         its use.
   (s) A child-caring facility shall develop and maintain clearly
written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(1) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:110, Section 3(10).

(7) Interstate placement.
   (a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:
   1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030, and 615.040; and
   2. The Interstate Compact on Juveniles, KRS 615.010.
   (b) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-caring facility personnel, the child-caring facility shall obtain prior consent from the cabinet staff member responsible for the case.
   (c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention.
   (a) The child-caring facility shall retain all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years.
   (b) Make available all books, records, and financial information for review, inspection, audited, and photostating by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-camp facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:
   (a) Construction;
   (b) Sanitation; and
   (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 615 KAR 10.060.

(3) A climate control system shall be provided as follows:
   (a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;
   (b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;
   (c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs
      1. A fan is utilized to circulate air;
      2. The child-caring facility is properly ventilated to outside air;
      3. Ice water is readily available and served to residents; and
      4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.
   (d) The water supply shall be from an approved source and easily available from the following:
      [a][2] Drinking fountain;
      [b][2] Refrigerator; or
      [c][3] Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 1988 050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.
   (a) The building and its content shall be maintained in a clean and safe condition and in good repair.
   (b) A maintenance plan shall be implemented.
   (c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the extenor of the building is in good repair.
   (d) The interior of the building and its contents shall be in good repair.
   (e) Garbage and trash shall be stored in an area separate from those used for the preparation and storage of food; and
   (f) Removed from the premises regularly; and
   (g) In a container that is cleaned regularly
   (h) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:
      1. The facility's maintenance personnel; and
      2. A pest control company with which the facility has a contract.

(7) Bedroom.
   (a) A bedroom shall be:
      1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and
      2. Constructed to allow no more than four (4) residents per room.
   (b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:
      1. Long and wide enough to accommodate the child's size;
      2. Developmentally appropriate for the child; and
      3. Equipped with a support mechanism and a clean mattress
   (c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:
      1. Proximity to a radiator or heat outlet; or
      2. Exposure to drafts.
   (d) Except for a sibling indicated in an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5).
   (e) Storage [Close space and drawer] space shall be provided for each child to accommodate his or her personal belongings in at
      1. Closet and drawers; or
      2. Closet for the child's exclusive use and shelves within the closet.
   (f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.
   (g) A child shall be provided with clean bed linen, laundered at least once a week, and a waterproof mattress covering.
   (h) Indoor living area. An indoor living area shall have:
      (1) At least thirty-five (35) square feet per child; and
      (2) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.
   (a) For every six (6) children residing in with the living unit, a living unit shall have a minimum of:
      1. One (1) wash basin with hot and cold water;
      2. One (1) flush toilet; and
      3. One (1) bath shower with hot and cold water.
   (b) A child shall be provided with access to:
      1. Toilet paper;
      2. Towels;
      3. Soap, and
      4. A wastebasket.
   (c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall
      1. Be partitioned; and
      2. Include a door capable of remaining closed.
   (d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

   (a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:
      1. The care and disposition of an ill child; and
      2. Emergency care.
   (b) The service of a physician shall be made available to a child if the [a] service of a licensed physician is not available in the community, the child-caring facility shall request the assistance of:
      1. County health department, or
      2. The Department for Public Health, Division of Adult and Child Health Improvement.
   (c) Staff shall follow licensed physician orders for:
1. Medicine;
2. Prescription; and
3. Medical care.

(d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:
1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;
2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a licensed physician, within two (2) weeks of admission; unless it has been documented that the child has received an examination during the past twelve (12) months; and
3. The examining professional shall report, in writing, observations and findings including:
   a. Developmental history of the child, illnesses, operations, and immunizations if available to the physician;
   b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
   c. Visual and auditory examination results;
   d. Recommendation and order for future care, treatment, and examinations;
   e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and
   f. Other tests for communicable disease as indicated by the medical and social history of the child.
(e) An annual physical examination shall be scheduled and documented as established in paragraph (d)(3) of this subsection.
(f) Upon admission, the child-caring facility shall consult with a physician if there is evidence that the child may require medical attention.

(g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.
(h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a
   1. Physician;
   2. Nurse; or
   3. Designated staff member.
   (i) The health record shall contain the following:
   1. Copy of each physical examination, including any recommendations for treatment;
   2. Previous and continuing health and medical history, if available;
   3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
   4. Report and date of each dental examination and treatment;
   5. Authorization for regular and emergency medical, dental, and medical care, if admitted by the legal custodian;
   6. Documentation of medication administered to the child; and
   7. Documentation of a special provision made for the child in accordance with a physician's order.
   (j) A child's medical need shall be provided for as recommended by a licensed physician.
   (k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(6) [214.034(6)].
   (l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:
      1. The child-caring facility shall immediately notify the:
         a. County coroner;
         b. Child's parent;
         c. Guardian or custodian; and
         d. Cabinet staff;
      2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community-Based Services;
      3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community-Based Services, on the next working day following the verbal report; and
      4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).
   (m) Upon discharge, medical information shall follow the child if a release form has been obtained.
   (n) Unless [with the exception of] a dental examination [that] has been performed in the six (6) months preceding admission, the child-caring facility, within one (1) week after a child's admission, shall schedule an appointment for a dental examination. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.
   (o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.
   (p) The child-caring facility shall:
      1. Document the information required by this subsection; and
      2. Assure the confidentiality of the information.
   (q) The child-caring facility shall maintain a continuous program of personal hygiene.
   (2) Safety.
   (a) A child shall be instructed in fire prevention, safety, and fire emergency procedures
   1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:
      a. An evacuation route and procedure; and
      b. The location of fire extinguishers.
   2. Emergency drills shall be performed quarterly and documented for each of the following emergency events:
      a. Fire;
      b. Tornado or severe thunderstorm warning; and
      c. Flash flood, if applicable. [Documentation of fire evacuation plan and emergency drills shall be performed quarterly for each of the following emergency events:
         a. Tornado or severe thunderstorm warning;
         b. Flash flood, if applicable;
         c. Other emergency situations.
   3. An emergency plan shall designate a suitable shelter in the event of an emergency.
   (b) A child-caring facility with a swimming pool shall be staffed with a [red-crease] certified lifeguard in accordance with 902 KAR 10 120, Section 13.
   (c) Donated home processed foods shall be prohibited.
   (d) Transportation.
   1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:
      a. Compliance with state laws pertaining to vehicles, drivers, and insurance,
      b. A seat for each child and that the child remain seated while the vehicle is in motion;
      c. A seat belt be used to secure the child,
      d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment; and
      e. That a child never be left unattended in a vehicle; and
   2. The maximum number of children a driver shall supervise alone is four (4).
   3. A child under forty (40) inches tall or forty (40) pounds in weight shall not be transported unless restrained in a safety seat approved in accordance with KRS 189.126(3).
   4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.
   5. If transportation is provided by a means other than licensed public transportation:
      a. The vehicle shall be maintained in a safe mechanical and operable condition;
      b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
      c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.
   (e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements, with the appropriate safety measures included in the child's ITP.
   (f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the
commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 655 §301(1), 620 §301(2), and 620 §301(3).
1. Segregation shall include sight and sound separation of a [the] child committed to the Department of Juvenile Justice from a [and the] child committed to the cabinet for the following functions within the facility or activities supervised by the facility:
   a. Sleeping;
   b. Personal hygiene; and
   c. Tidiness.
2. During other functions within the facility or activities supervised by the facility, segregation shall include separation of a [the] child committed to the Department of Juvenile Justice from a [and the] child committed to the cabinet to prohibit any physical contact and verbal communication between the children.
   (d) Physical management [(Therapeutic hold)] shall be used in an emergency or a crisis situation only:
      1. After attempts to de-escalate the situation have been made;
      2. By trained staff; and
      3. To prevent
         a. A child from injury to self or others; or
         b. Serious property damage or disruption of the child-caring facility's program.
   (e) Physical management [(Therapeutic hold)] shall not be used as:
      1. Punishment;
      2. Discipline; or
      3. For the convenience of staff.
   (f) Physical management [(Therapeutic hold)] shall be discontinued if a child displays adverse side effects including:
      1. Illness;
      2. Severe emotional or physical stress; or
      3. Physical damage.
   (3) Nutritional requirements.
      (a) A child shall be served meals that:
         1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and
         2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.
      (b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.
      (c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.
         (d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.
      (e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.
         1. A nourishing snack shall be provided and:
            a. May be part of the daily food needs;
            b. Shalt not replace a regular meal, and
            c. Shall be recorded on the menu.
         2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.
         3. Food, or withholding of food, shall not be used as a punishment.
         4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.
      5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.
      6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:
         a. The person's age;
         b. A dietary restriction, or
         c. A religious preference.
   (f) Table service shall be provided for a child capable of eating at a table.
      1. Tables and chairs shall be:
         a. Of a height that corresponds to the size of the child served; and
         b. Constructed of material that can be easily sanitized.
      2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.
      (g) A written report of a food inspection by municipal, county, or federal authorities shall:
         1. Be kept on file at the child-caring facility; and
         2. Meet local, state, and federal regulations.
      (h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.
   Section 6. General Requirements. (1) An incident of suspected child abuse or neglect shall be reported as required by KRS 620 §300.
   (2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:
      1. Document each incident;
      2. Keep each incident document on file; and
      3. Make the files accessible to the cabinet.
   (b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.
      (c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.
      (d) If a picture, slide, recording, or other private, personal effect of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:
         1. A parent or guardian; or
         2. An authorized:
            a. Representative of the cabinet;
            b. Representative of the Department of Juvenile Justice; or
            c. Legal representative.
   (3) For an activity conducted away from a child-caring facility, the facility shall:
      (a) Safeguard the health and safety of the children during the activity.
      (b) Have a written policy and procedures governing the activity;
      (c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and
      (d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.
   (4) Clothing and personal possessions.
      (a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.
      (b) A child shall be provided individual articles of personal hygiene.
   (c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.
   (5) A child's money.
      (a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.
      (b) A child shall have access to information regarding the balance of the child's [his] fund.
      (c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.
      (6) Visitation and communication shall include:
         (a) Written policy on visitation and communication;
         (b) An arrangement for visitation that is not in conflict with the ITP;
         (c) Documentation of each visit in the case record; and
         (d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.
      (e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.
      (7) Religion, culture, and ethnic origin.
         (a) Facility policy shall demonstrate consideration for and sensitivity to:
            1. The racial, cultural, ethnic, and religious background of a child in care;
2. Availability of activities appropriate to the child's cultural or ethnic origin.
   (b) With the exception of a religious practice that is destructive or places a child in physical danger, an opportunity shall be provided for a child to:
   1. Practice the religious belief and faith of the child's individual or family preference; and
   2. Participate in a religious activity without coercion.

3. Education.
   (a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:
      1. School attendance;
      2. Teaching staff;
      3. School records;
      4. Educational supplies and equipment;
      5. Individual educational plans; and
      6. Use of a community school.
   (b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.
   (c) A child shall be enrolled in an accredited educational program within one (1) week of admission.
   (d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

4. If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

5. The child-caring facility shall provide a quiet area and designated time for study.

   (a) An assigned chore or work assignment shall not place the child in physical danger.

7. A chore assignment shall be posted within the child's living quarters.

8. A child may be given a job in compliance with child labor laws for which he receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

9. A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:
   1. Performed as restitution for intentional property damage made by the child; or
   2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

10. A child shall be given a rest period of at least ten (10) minutes during each hour worked.

11. Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

   (a) A child-caring facility shall have written policy and procedure governing disciplinary action.
   (b) Discipline shall be:
      1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process, and
      2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.
   (c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.
   (d) The following practices shall not be allowed:
      1. Cursing,
      2. Screaming,
      3. Name calling,
      4. Threatening of physical harm;

5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Corporal physical discipline, except in accordance with KRS 199.640(6);
9. Hitting;
10. Unnecessarily rough handling,
11. Other physical punishment; or
12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraints (restraining), chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:
   1. In sight or hearing of staff; and
   2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.


(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that
   1. The service of the child-caring facility is designed to address; and
   2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) The child-caring facility shall conduct an:

(1) Preadmission interview with the child; or
(2) Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement.
   [There shall be a preadmission interview with the child.]

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:
   1. Commitment order or signed voluntary admission form;
   2. Verification of birth;
   3. Immunization record; and
   4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:
   1. Photograph, video, and audio tape;
   2. Emergency and routine medical care; and

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:
   1. Assessment;
   2. Assignment;
   3. Designation of a case coordinator; and

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:
   1. Identifying information;
   2. Presenting problem;
   3. History (developmental, social, emotional health, education);
and
4. Current level of functioning including strengths and weakness.
   (c) An initial ITP shall be developed by designated staff and
   implemented within twenty-four (24) hours of admission.
(3) Comprehensive assessment and treatment plan.
   (a) A comprehensive emotional and behavioral assessment of
   a child shall be completed by the treatment team and entered in
   the case record within twenty-one (21) days of admission, including
   the following:
   1. A history of previous emotional, behavioral, and substance abuse
      problems and treatment;
   2. The child's current emotional, behavioral, and developmental
      functioning, including strengths and weaknesses;
   3. A psychiatric or psychological evaluation if recommended by
      the treatment team;
   4. Other functional evaluation of language, self-care, social
      effectiveness, and visual-motor functioning, if recommended by the
      treatment team,
   5. Social assessment that includes:
      a. Environment and home;
      b. Religion;
      c. Ethnic group;
      d. Developmental history;
      e. Family dynamics and composition; and
      f. Education;
   (b) A coordinated treatment team approach shall be utilized in
       the development, implementation, and evaluation of a comprehen-
       sive ITP.
   (c) A comprehensive ITP shall be developed and implemented,
       in accordance with KRS 199.640(5)(a)(a), to improve child function-
       ing based upon the individual need of the child, and the child's
       family if appropriate, and shall include at least the following com-
       ponents.
       1. Goals and objectives for permanence,
       2. Time frame projected for completion of each goal and objective;
       3. Method for accomplishing each goal and objective, including
          utilization of community providers;
       4. Person responsible for completion of each goal and objective;
       and
       5. Projected discharge date and placement plan.
   (d) The comprehensive ITP shall be developed within twenty-
       one (21) days of admission.
   1. A treatment team review of the child's and family's progress
      toward meeting each treatment goal shall occur at least monthly.
   2. Every effort shall be made to involve the child and his family
      in the monthly treatment team review.
   3. Treatment team evaluation of the comprehensive ITP shall
      occur at least quarterly.
   4. An additional assessment shall be completed upon the recom-
      mendation of the treatment team.
   5. Evaluation and assessment information shall be docu-
      mented and maintained in the child's record
   (e) The child shall be offered the opportunity to sign an ITP and
       ITP review, signifying understanding of the ITP.
   1. If the child refuses to sign or is developmentally unable to
      understand the circumstance, this shall be documented in the record.
   2. The child and his family or custodian shall receive a copy of
      the ITP.
   (4) Treatment environment. The daily child-caring program
   shall be planned in the following manner in order to create an at-
   mosphere conducive to treatment:
   (a) The child-caring facility shall have written policy and proce-
       dure describing its daily routine, rules, activity, and child and staff
       interaction.
   (b) The daily child-caring program shall be:
       1. Planned to provide a framework for daily living; and
       2. Reviewed and revised as the needs of the Individual child or
          living group change.
   (c) The daily routine shall be written and available to each child.
   (d) Each rule shall be clearly stated in language that a child
       can understand.
   (e) Staff shall interact with a child in a warm, supportive, con-
       structive, and confidential manner and shall treat the child with
       respect.
   (f) Counseling and interviewing a child and the child's family
       shall be conducted in a private area.
   (g) A daily recreational activity shall be available to promote
       mastery of:
       1. Developmental tasks;
       2. Development of relationships; and
       3. Increase in self-esteem, in accordance with the child's ITP.
   (h) The child-caring facility shall provide recreational equip-
       ment, maintained in usable and safe condition, to implement the
       recreational program.
   (5) The child-caring facility shall make available a quality pro-
       gram for substance abuse prevention and treatment in compliance
       with KRS 199.640(5)(b).
   (6) Discharge and aftercare.
   (a) The child-caring facility shall have written policy and proce-
       dure that describe the condition under which a child may be dis-
       charged, including criteria for an unplanned or emergency dis-
       charge and a discharge inconsistent with the ITP.
   (b) The approval of the program director shall be required for
       an unplanned or emergency discharge.
   (c) Discharge planning shall begin with the development of the
       ITP and shall continue throughout subsequent ITP reviews. The
       treatment team shall consider the following matters related to dis-
       charge planning.
       1. Identification of placement;
       2. Community resources to provide support for youth, and
       3. Family services;
   (d) When a child is leaving a facility as a planned discharge, a
       predischarge conference shall be held to ensure that the child and
       family are prepared for successful transition into placement. The
       parent, guardian or custodian, the child, and the treatment team
       shall attend this conference.
   (e) The child shall have at least one (1) preplacement visit prior
       to the planned discharge, or the facility shall document unsuccess-
       ful efforts to arrange a visit.
   (f) The child-caring facility shall prepare a written discharge
       summary within fourteen (14) days following the date of discharge.
       A copy shall be provided to the custody holder. The summary shall
       include:
       1. Information related to progress toward completion of each
          ITP goal;
       2. Each barrier to treatment;
       3. Each treatment method used in working with the child;
       4. Date of discharge;
       5. Reason for discharge; and
       6. Name, telephone number, and address of person or child-
          caring facility to whom the child was discharged.
   (g) An aftercare service shall be provided to a child where no
       other agency has responsibility for the child's transition or adjust-
       ment to a new environment. Upon discharge, the following needs of
       the child shall be assessed and a referral made for needed after-
       care service
       1. Educational;
       2. Medical;
       3. Vocational;
       4. Psychological;
       5. Legal, and
       6. Social;
   (7) Case record. The child-caring facility shall:
       (a) Maintain, in a confidential and secure manner, a current
           case record on each child, including:
           1. Identifying information on the child to include:
              a. Name, ethnic origin and gender;
              b. Date of birth and Social Security number;
              c. Former residence;
              d. Name, address, and occupation of each parent, if available;
              e. Date of admission, and
              f. Type of commitment,
       2. Commitment order or custodian's consent form for admis-
sion,
3. Birth and immunization certificates;
4. Education;
5. Medical and dental records that may be maintained sepa-
rately from the case record;
6. Assessment data or social history;
7. ITP and each review;
8. Each incident report, with a paper or electronic copy main-
tained in a centralized location within the licensed facility;
9. Chronological recording;
10. Correspondence with court, family, and custody holder;
11. Discharge summary; and
12. Written consent;
(b) Document, at least weekly, progress made by the child and
his family toward meeting the treatment goal;
(c) Record the aftercare service it provides until the service is
terminated;
(d) Have a written policy regarding maintenance, security, and
disposal of a case record maintained by, or in possession of, the
child-care facility;
(e) Not disclose information concerning a child or his family to
a person not directly involved in the case, without the written con-
sent of the custodian of the child;
(f) Forward, within twenty-four (24) hours, a request made by
an individual or an agency to review the case record of a commit-
ted child, to the
1. Commissioner, Department for Community Based Services,
if the child is committed to the cabinet; or
2. Other legal custodian, if the child is not committed to the
         cabinet, immediately forward a request made by an individual or
         an agency to review the case record of a committed child, to the
         commissioner, Department for Community Based Services, Cabinet
         for Health and Family Services, or other legal custodian;
9. With the exception of a sealed adoptive record, release
identifying or personal information including a Social Security card,
birth certificate, or driver’s license to the child at discharge;
(h) After the discharge of a child;
1. Maintain the case record at the child-care facility for at
least three (3) years, and
2. After three (3) years, the child-care facility may archive the
case record and have it transferred by the cabinet to one (1) of the
         cabinet’s designated record centers; or
3. Maintain the case record permanently at the child-care
   facility;
(i) If the child-care facility ceases to operate, transfer
   the case record to the Cabinet for Health and Family Services;
   (a) The cabinet shall maintain a file on each record transferred
   to one (1) of its record centers. The file shall include the following
   information:
   (a) The child’s name, case number, date of birth; and
   (b) Date the case record was sent to the cabinet;
   (b) All records maintained by the child-care facility shall be
made available to the cabinet or designee upon request.
Section 8. Independent Living Services. A child-care facility
shall:
1. Provide independent living services:
   (a) To a child;
   1. In the custody of a state agency; and
   2. Twelve (12) totwenty-one (21) years of age;
   (b) As prescribed in the child’s ITP; and
   (c) In accordance with 42 U.S.C. 677(a)(4) through (6); and
   (d) Teach independent living;
   (a) To a child:
   1. In the custody of a state agency; and
   2. Sixteen (16) years of age and older; and
   (b) Developed in accordance with 922 KAR 1:310, Section
   17(1)(e).

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Undersecretary
MARK D. BIRDWHISTEL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 9 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 14, 2007)

922 KAR 1:310. Standards for child-placing agencies.

RELATES TO KRS 2 015, 17.165, 17.500(6), 158.135(1)(c), 194A.040, 194B.066(5), 199.011, 199.430(3), 199.470, 199.493, 199.510, 199.520, 199.570, 199.572, 199.590, 199.840, 199.845, 199.850-199.870, 202A.011(12), 2029.010(12), 216.000, 273.161(7), 311.720(3), 311.840(3), 314.011(5), (7), (9), 503.110(1), 600.020, 600.020(b), 605.050(1)(e), 610.110(6), 615.010-615.090, 620.020, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), 625.040, 625.043, 16 C F R 1508 and 1509 (1900-
14250), 45 C F R Parts 150-164, 1355.35, 8 U S C 1151, 42
677(a)(1)-(6), 1401-1409[4-E0 2004-726]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.051 requires [provide that] the Secretary of the Cabinet for Health and Family Services to [shall] promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services]- KRS 199.540(5)(a) requires the Secretary of the Cabinet for Health and Family Services [Families-And-Children] to promulgate administrative regulations establishing basic standards of care and services for child-care facilities and child-placing agencies. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adequate supervision" means adult
oversight of a child’s activities with consideration of the child’s past and
current:
(a) Incidents;
(b) High risk behaviors; and
(c) Needs.
(2) "Adoption" means the legal process by which a child be-
comes the child of a person or persons other than biological
parents.
(3) [9] "Aftercare" means services provided to the child after
discharge from a child-placing agency.
(4) [9] "Applicant" means an individual or a family subject to
approval by the child-placing agency as a:
(a) Foster home; or
(b) Adoptive home.
(5) [4] "Board of directors" is defined by KRS 273.161(7).
(6) [6] "Case management" means a process whereby a state
agency or child-placing agency assesses the individualized needs of
a child or family, arranges for the provision of services, and
maintains documentation of actions and outcomes.
(7) [6] "Child" is defined by KRS 199.011(4) and 600.020(6)
and may include:
(a) Covered under KRS 203.005(1) or KRS 203.005(2).
(b) Person who has not reached
(a) Eighteen (18) years of age, unless there is an extended
commitment for purposes in accordance with KRS 610.110(5); or
(b) A child who meets the exceptions to the age of majority in
accordance with KRS 203.015 [means a person who has not
reached
(a) Eighteen (18) years of age, unless there is an extended
commitment for purposes in accordance with KRS 610.110(5); or
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620.140(4)(d), or
(b) Twenty-one (21) years of age for a child committed to the Department of Juvenile Justice.

(8) [(7)] "Child-placing agency" is defined by KRS 199.011(7).

(9) [(8)] "Community resource" means a service or activity available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child.

(10) [(9)] "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(11) [(10)] "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(12) [(11)] "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in Section 17(1) of this administration regulation.

(13) [(12)] "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(14) [(13)] "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(15) [(14)] "Licensed health care professional" is defined by KRS 216.000(1).

(16) [(15)] "Medically-fragile child" means a child who is determined to have a medical condition as specified in KAR 222 KAR 1.350.

(17) [(16)] "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(18) [(17)] "Permamoneone is defined by KRS 620.000(4).

(19) [(18)] "Placement" means a foster or adoptive home that has been approved by completing an application process, home study, and required preparation.

(20) [(19)] "Placement services" is defined by KRS 409.011(9).

(21) [(20)] "Program director" means the person responsible for supervising the day-to-day operation of the program.

(22) [(21)] "Respite care" means temporary care provided by another individual or family to:

(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent; or

(b) Allow an adjustment period for the child placed in out-of-home care.

(23) [(22)] "Sex crime" is defined by KRS 17.500(8).

(24) [(23)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(25) [(24)] "Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(26) [(25)] "Supervision Plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)(2) of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(27) [(26)] "Therapeutic foster care" is defined by KRS 158.153(1)(c).

(28) [(27)] "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(29) [(28)] "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2, Administration and Operation. (1) Licensing procedures:

(a) Licensing procedures for a child-placing agency shall be administered pursuant to KAR 222 KAR 1.350.

(b) An independent living program is an optional component of the child-placing agency's license.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of accruing an agreement with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held-for-profit organization, that shall:

(a) Consist of a minimum of seven (7) members,
(b) Meet at least quarterly;
(c) Cause minutes of the meeting to be taken and kept in written form;
(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;
(e) Approve a mission statement delineating the:
   1. Purpose;
   2. Objective;
   3. Scope of services to be provided; and
   4. Intake policy specifying the type of child to be accepted for care;
(f) Hire, supervise, and annually evaluate the executive director of the child-placing agency and:
   (g) Delineate in writing the duties of the executive director.

(3) Executive director. The executive director shall:

(a) The executive director shall:
   1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;
   2. Oversee all aspects of the child-placing agency; and
   3. Report to the board, on a quarterly basis, the following:
      a. Evaluation of program services;
      b. Measure attainment of the goals and objectives established pursuant to find subsection (2)(e) of this section;

      c. Staff training and development;
      d. Incident reports.
(b) The criteria and process of this evaluation shall be approved by the board annually.

(c) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications:

(a) An executive director shall possess the following qualifications:

1. A master's degree in any of the following human service fields:
   (i) Social work;
   (ii) Sociology;
   (iii) Psychology;
   (iv) Guidance and counseling;
   (v) Education;
   (vi) Religious education;
   (vii) Business administration;
   (viii) Criminal justice;
   (ix) Public administration;
   (x) Child-care administration;
   (xi) Nursing;
   (xii) Family studies, or
   (xiii) Another human service field related to working with families and children [a family or child]; and
2. Two (2) years of work experience in a human service program;

(b) A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph, and four (4) years work experience in a human services program.

(c) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree in social work or in a discipline designated in paragraph (a)(1) of this subsection, or
2. A bachelor's degree in social work or in a discipline desig-
nated in paragraph (a) of this subsection, and
b. At least two (2) years professional experience in working
c. A social services worker shall:
d. Hold at least a bachelor's degree in social work or a human
1. Be responsible for social work, counseling or planning and
services field.
coordinating services to a child; and
2. Hold at least a master's degree in a human services discipline;
and
3. Have at least five (5) years total experience in mental health
treatment, with a minimum of three (3) years experience in mental
health treatment of children with emotional or behavioral disabilities
and their families.
(a) A child-placing agency contracting for the service of a
social services worker not on the staff of the child-placing agency
obtain [provide] documentation [document] that the social
services worker has the qualifications in paragraph (c) of this
subsection.
(b) An agreement for this provision of service shall be on file at the
child-placing agency and shall specify the qualifications of the social
services worker.
(f) The program director shall supervise social service staff.
(g) In a therapeutic foster care program, approval and evalu-
ation of services shall be carried out by a person meeting the qualifi-
cations of a treatment director.
(h) Social services staff shall not carry a caseload of more than
twenty (20) children.
(i) Personnel policy.
(a) A child-placing agency shall have and comply with written
personnel policies and procedures.
(b) An employee shall:
1. Be at least eighteen (18) years of age, [and]
2. Submit to a criminal background check in accordance with
KRS 17.165 and a central registry check in accordance with 922
KAR 1:470, and
3. Submit to a new criminal background check in accordance
with KRS 17.165 and central registry check in accordance with 922
KAR 1:470 at least once every two (2) years.
(c) 1. A person against whom has been made a substantiated
allegation of abuse, neglect, or exploitation of a child shall not be
employed in a position involving direct contact with a child.
2. The cabinet shall respond to allegations of abuse, neglect,
or exploitation of a child in accordance with 922 KAR 1:330 and
922 KAR 1:480.
(d) A current personnel record shall be maintained for an em-
ployee that includes the following:
1. Name, address, Social Security number, date of employ-
ment, and date of birth;
2. Evidence of qualifications, including degree, current registra-
tion, certification, or licensure;
3. Record of participation in staff development;
4. Record of performance evaluation;
5. Criminal records and central registry checks [check] pursuant
to paragraph (b)2 and 3 of this subsection;
6. Record of a physical exam related to employment, as speci-
fied in the child-placing agency's policies and procedures;
7. Personnel action;
8. Application for employment, resume, or contract; and
(e) The child-placing agency shall have an ongoing staff devel-
opment program under the supervision of a designated staff mem-
ber.
(f) An employee under indictment, legally charged with feloni-
ous conduct, or subject to a cabinet investigation in accordance
with 922 KAR 1:330 shall:
1. Be immediately removed from contact with a child, and
2. Not be allowed to work with the child until:
- A prevention plan has been written and approved by a design-
ated regional cabinet staff;
- The person is cleared of the charge; or
- A cabinet investigation reveals an unsubstantiated finding, if
the charge resulted from an allegation of child:
- Abuse;
- Neglect, or
- Exploitation.
(g) Unless the volunteer is a practicum student, a volunteer
who performs a similar function as paid staff described in subsec-
tion (d) of this section shall meet the same requirements and qual-
ifications.
(h) Practicum students and volunteers shall submit to a back-
ground check and any other mandatory requirements listed in sub-
section (5)(b) and (c) of this section.
(i) A current personnel record shall be maintained for a practi-
cum student or volunteer that includes the following:
1. Name, address, Social Security number, starting date, and
date of birth.
2. Evidence of qualifications if the volunteer performs a similar
function as paid staff, and
3. Criminal records and central registry checks pursuant to par-
agraph (h) of this subsection.

Section 3. Interstate Placement. (1) Prior to accepting a child
from another state or prior to placing a child outside Kentucky, the
child-placing agency shall comply with:
(a) KRS 615.030 to 615.040, Interstate Compact on Placement
of Children;
(b) KRS 615.010, Interstate Compact on Juveniles, and
(c) 42 U S C 671(a)(23).
(2) If a child committed to the cabinet makes a brief visit out of
state, not accompanied by child-placing agency personnel, the
child-placing agency shall obtain prior consent of designated re-
gional cabinet staff.
(3) A child-placing agency shall comply with subsection (1) of
this section, if a child placed with the child-placing agency visits or
receives respite care in another state for a period to exceed:
- Thirty (30) days; or
- The child's school vacation period.
(4) If an emergency placement of a child into a licensed child-
placing agency is made, compliance with KRS 615.030 to 615.040
shall be the responsibility of the placement source.

agency's [agency] social services staff shall recruit a prospective
foster or adoptive home.
(2) A child-placing agency shall:
(a) Complete a home study; and
(b) Approve the home prior to the placement of a child.
(3) Documentation of the home study shall include the follow-
ing:
(a) A personal interview with each member of the applicant's
household;
(b) An assessment of the attitude of each member of the applic-
ant's household toward the placement of a child into the home or
adoption;
(c) Observations of the functioning of the applicant's house-
hold, including interpersonal relationships and patterns of interac-
tion;
(d) The applicant's ability to accept a child's relationship with
the child's family of origin;
(e) Proof of the applicant's
1. Identity, such as a federal or state-issued photo identifica-
tion card; and
2. Age of twenty-one (21) years or older; and
3. United States citizenship, such as a birth certificate, or legal
alien status, such as a permanent resident card, as described in 8
U S C 1151;
(f) A statement for each member of the applicant's household
that shall be signed by a licensed physician or licensed health care
professional verifying that the individual:
- Is free of a communicable or infectious disease; and
- Has no illness or condition that would present
- Be signed by a licensed health care professional, and
- State that the household member is free of illness or condi-
tion that presents a health or safety risk to a child placed in the
applicant's home;
2. Type of business; and
3. Ciarlela; and

4. If an applicant was previously denied or approval [appealed to foster or adopt a child by another child-placing agency or the cabinet, verification of the denial of,] closure, and indication of whether the closure was at the request of the foster parents or the agency [supporting reason from the agency or cabinet].

(4) Exception to subsection (3)(e)(2) of this section may be granted if the applicant is
(a) Between eighteen (18) and twenty-one (21) years of age;
(b) A relative of [to] the child to be placed in the applicant's home; and
(c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(5)(a) Following approval as a foster home, the approving child-placing agency may request written approval from the state agency[; with custody of the child, for the foster home to provide services as a certified:
1. Provider of Supports for Community Living in accordance with 907 KAR 1:145;
2. Therapeutic foster care provider for adults in accordance with 907 KAR 3:030; or
3. Family child care home in accordance with 922 KAR 2.100.
(b) Except as provided in paragraph (a) of this subsection, an approved foster home shall not simultaneously:
1. Provide day care center services in accordance with 922 KAR 2:300; and
2. Be used as a licensed or certified health care or social service provider.

[[c]The written approval specified in paragraph (a) of this subsection shall be required upon the effective date of this administrative regulation.]

(7) An employee of the department who provides protection and permanency services shall be prohibited from becoming a foster parent or respite care provider for a child in the custody of the cabinet, unless the:
(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and
(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child.

(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the:
(a) Employee had:
1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child, or
2. Adopted a sibling of the child available for adoption; and
(b) Commissioner approves, in writing, the employee to adopt.

(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as [a]:
1. A foster parent;
2. An adoptive parent, or
3. A respite care provider.
(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of
1. A conflict of interest; or

(10) A child-placing agency may make an exception to subsection (9)(b) of this section if:
(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;
(b) The child is learning to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; and
(c) Measures are taken to prevent unauthorized access by another child in the same home.

(11) If an applicant is approved as a foster home, adoptive
home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:
(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and
(b) Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; and
2. If an applicant lacks training in accordance with subparagraph 1 of this paragraph, the child-placing agency shall, prior to placement of a child in the home:
(a) Provide training in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; or
(b) i. Develop an individualized curriculum to fulfill unmet training needs; and
ii. Document the applicant's compliance with the individualized curriculum.
Section 5. Orientation and Preparation of a Foster Home. A child-placing agency shall:
1. Develop and maintain an orientation and preparation curriculum to be kept on file;
2. Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:
(a) Child-placing agency program description with mission statement;
(b) Information about the rights and responsibilities of the home; and
(c) Background information about the foster child and the child's family, including information in accordance with KRS 605.00(1)(b);
(b) An example of an actual experience from a foster parent that has fostered a child; and
(c) Information regarding:
1. The stages of grief;
2. Identification of the behavior linked to each stage;
3. The long-term effect of separation and loss on a child;
4. Permanency planning for a child, including independent living services;
5. The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;
6. Family functioning, values, and expectations of a foster home;
7. Cultural competency;
8. How a child enters and experiences foster care, and the importance of achieving permanency, and
9. The importance of birth family and culture and helping children leave foster care;
(d) Identification of changes that may occur in the home if a placement occurs, to include:
1. Family adjustment and disruption;
2. Identity issues, and
3. Discipline issues and child behavior management; and
(e) Specific requirements and responsibilities of a foster parent.
3. Maintain an ongoing foster home preparation and training program that:
(a) Provides a minimum of six (6) hours foster home training annually; and
(b) Maintains a record of preparation and training completed.
Section 6. Placement, and Case Management, and Supervision of a Child in a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:
(a) Place a child only in an approved foster home; and
(b) Keep a record of who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the Cabinet in accordance with KRS 605.00(1), 620.0020, and 620.228(3).
(2) A child-placing agency shall select a foster home for a child based upon the
(a) The child's assessment and ITP, if available;
(b) Any information concerning the child's needs in placement, and the child's history of aggressive behavior or sexual acting-out; and
(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section, or another child in the foster home (individual needs of the child, and
(b) Child's ITP.
(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.
(4)(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.
(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.
(5) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.
(6) (a) Justification for an exception to subsection (4)(a) or (5)

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4. Criminal activity by the child requiring notification of law enforcement;
5. Death; or
6. [A child's] Possession of a deadly weapon by a child;
   (b) [(f)] Report, if applicable, within two (2) business days to the
   state agency, which has custody of the child, if there is a
   1. Change in address,
   2. Change in the number of people living in the home; or
   3. Significant change in the foster home, such as changes in
   health or income status of an individual living in the foster home;
   (i) [(g)] Establish policies and procedures for supervision of a
   foster home by a worker other than the social services worker as-
   signed to the foster home, who meets qualifications specified in
   section 2(4)(c) of this administrative regulation to:
   1. Include:
   a. Frequency of an in-home visit with the foster parent;
   b. Means of supervision;
   c. Methods of supervision; and
   d. Personnel conducting the supervision;
   2. Ensure a foster child's placement stability and safety; and
   3. Be individualized, as needed, for the:
   a. Child, or
   b. Foster home,
   (j) [(i)] Identify and make available necessary supports to a
   foster home, including
   1. A plan for respite care in accordance with Section 13 of this
      administrative regulation,
   2. Twenty-four (24) hour crisis intervention; and
   3. A foster home support group;
   (k) [(j)] Assure that a child receives care and services, including
   independent living services:
   1. In accordance with Section 16 of this administrative regulation;
   and
   2. As prescribed by the child's needs as assessed in the child's
      ITP;
   (l) [(k)] Provide information to a foster parent regarding the
   behavior and development of the child placed by the child-placing
   agency,
   (m) [(l)] Inform the foster parent, in accordance with KRS
   605:090(1)(b), of:
   1. Inappropriate sexual acts or sexual behavior of the child as
      specifically known to the child-placing agency; and
   2. Any behaviors of the child that indicate a safety risk for the
      placement;
   (n) [(m)] Document each effort to:
   1. Protect the legal rights of the family and the child; and
   2. Maintain the bond between the child and the child's family,
      in accordance with the child's permanency plan;
   (o) [(n)] Assure that a child shall have, for the child's exclusive
      use, clothing comparable in quality and variety to that worn by
      other children with whom the child may associate;
   (p) [(o)] Be responsible for monitoring the child's school pro-
      gress and attendance;
   (q) [(p)] Secure psychological and psychiatric services, voca-
      tional counseling, or other services if indicated by the child's needs;
   (r) [(q)] Reassess and document quarterly, in the child's ITP,
      placement and permanency goals [every ninety- (90)-calendar-
      days], including independent living services, in accordance with
      Section 16 of this administrative regulation;
   (s) [(r)] Conduct and document a face-to-face visit with the
      child at least once per month; and
   (t) [(s)] Maintain foster care records in accordance with Section
      18 of this administrative regulation.
   (8) Without prior notification to and written authorization from
   the Kentucky Interstate Compact Administrator, a child shall not be,
   (a) Placed with a family that normally resides in another state,
   or
   (b) Permitted to go with a person to take up residence in an-
   other state.
   (9)(a) An approved foster home in use shall be evaluated on
   an annual basis for compliance with responsibilities listed in
   the written agreement described in subsection (7)(b) of this section.
   (b) Results shall be recorded in the foster parent file
   (10) Factors that shall result in a review of a foster home shall
   include:
   (a) Death or disability of a family member;
   (b) Sudden onset of a health condition that renders the foster
      parent's ability to care for a child placed in the home;
   (c) Change in marital status or home address;
   (d) Sudden, substantial decrease in, or loss of, income;
   (e) Child birth;
   (f) Use of a form of punishment that includes
      1. Cruel, severe, or humiliating actions;
      2. Corporal punishment inflicted in any manner;
      3. Denial of food, clothing, or shelter;
      4. Withholding implementation of the child's ITP [treatment
         plan];
      5. Denial of visits, telephone or mail contacts with family mem-
         bers, unless authorized by court of competent jurisdiction; and
      6. Assignment of extremely strenuous exercise or work;
      (g) A report of abuse, neglect, or dependency that results in a
      finding that is:
      1. Substantiated, or
      2. Reveals concern regarding the care of the child;
      (h) If the foster parent is cited with, charged with, or arrested
      due to a violation of law other than a minor traffic offense; or
      (i) An incident required to be reported in accordance with Sec-
         tions 6(7)(g) and (n), and 12(5) and (7) of this administrative
         regulation; or
      (j) Other factors identified by a child-placing agency [staff] that
         jeopardize the physical, mental, or emotional well being of the
         child.
   (11) The documentation of a review, specified in subsection
      (10) of this section, shall contain:
      (a) Identifying information;
      (b) Current composition of the household;
      (c) Description of the situation that initiated the review;
      (d) An assessment of the family functioning to determine if the
         child's needs are met, and
      (e) [A plan for] Corrective action that may include a recom-
         mendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster
Care Home. (1) A child-placing agency shall:
   (a) Maintain the orientation and preparation curriculum on file;
   and
   (b) Provide a minimum of thirty-six (36) hours of orientation
      and preparation for a prospective therapeutic foster care parent
      that shall incorporate the following topics areas:
      1. a. Child-placing agency program description with mission
         statement,
      b. Information about the rights and responsibilities of the ther-
         apeutic foster care home; and
      c. Background information about a foster child and the child's
         family;
      2. An example of an actual experience of a therapeutic foster
         care parent that has fostered a child;
      3. Stages of grief;
      4. Behaviors linked to each stage of grief;
      5 Long-term effects on a child from separation and loss;
      6 Permanency planning for a child, including independent
         living services;
      7. Importance of attachment on a child's growth and develop-
         ment and the way a child maintains and develops a healthy at-
         tachment, including attachment disorder and associated behav-
         iors;
      8. Family functioning, values, and expectations of a therapeutic
         foster care home;
      9. Changes that may occur in the home with placement of a
         child regarding:
         a. Family functioning;
         b. Family adjustment;
         c. Identity issues;
         d. Discipline issues and child behavior management, and
         e. Family disruption;
      10. Specific requirements and responsibilities of a therapeutic
         foster care home;
      11. Behavior management;
12. Communication skills; 
13. Skill teaching; 
14. Cultural competency; 
15. Behavior management de-escalation techniques; 
16. The dynamics of the sexually-abused child; and 
17. The effect of chemical abuse or dependence by the child or the child's biological parent.

(2) A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training.

(3) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:
(a) Provides a minimum of twenty-four (24) hours of annual training; and 
(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:
(a) May benefit from care in a family setting; and
(b) 1. Has clinical or behavioral needs that exceed supports available at a foster home; or
2. Is transitioning from group care as part of the process of returning to family and community.

(2) The number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:
(a) Documented in the therapeutic foster care parent's file; and 
(b) Authorized by the treatment director.

(4) The number of children residing in a therapeutic foster care home that cares for a child[, ] in the custody of the cabinet, shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) The child-placing agency shall request [submit a justification for] an exception to subsection (4) of this section in accordance with 922 KAR 1:350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 192.940(5)(a)(2), for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:
(a) Participation in the development of an assessment, [and] ITP, and supervision plan as specified in Section 6(7) of this administrative regulation that includes education, health, education and permanency plans;
(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;
(c) Adequate supervision of the child and implementation of components of the ITP [treatment plan], including daily log documentation as specified in the ITP [treatment plan]; 
(d) Working with the child-placing agency to promote stability and avoid disruption for the child;
(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and
(f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:
(a) A preplacement conference, in a nonemergency placement, for the purpose of:
1. Developing permanency goals and a discharge plan for the child, including independent living services; 
2. Developing a plan for the implementation of services; 
3. Identifying the treatment goals; and
4. Developing a behavior management plan if applicable; and
(b) Inviting and encouraging attendance to the preplacement conference by [ef];
1. The prospective therapeutic foster care home; 
2. A respite care provider approved in accordance with section 13(4) of this administrative regulation;
3. The child, if appropriate; and
4. The child's family.

(10) The social services worker shall:
(a) Have a first-face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;
(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;
(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;
(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;
(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;
(f) Carry a caseload of no more than twelve (12) therapeutic foster care children, taking into account:
1. Required responsibilities other than the case management of a child in foster care;
2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and
3. The intensity of [extent of intensive] services provided to the child and the child's family;
(g) Conduct a quarterly case consultation, including the:
1. Foster home;
2. Child's public agency worker;
3. Child-placing agency treatment director and social services worker; and
4. Child and the child's family, to the extent possible;
(h) Provide or contract for therapeutic services individualized for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;
(i) Identify the support needed by the foster family, including a:
1. Plan for respite care as provided in Section 13 of this administrative regulation;
2. Plan for twenty-four (24) hour on-call crisis intervention; and
3. Foster home support group;
4. Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition;
and
(k) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) The child-placing agency shall:
(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and
(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:
(a) A child in the custody of the cabinet; and
(b) Determined by the cabinet to meet the medically-fragile requirements of 922 KAR 1:350.

(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency.

(3) If a child placed with a child-placing agency in a non-medically-fragile foster home becomes medically-fragile in accordance with subsection (1) of this section, the commissioner or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically-fragile Foster Home. (1) A child-placing agency shall create a medically-fragile foster home only if the child-placing agency has:
(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically-fragile training in accordance with subsection 2(b) and (c) of this section; and

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(b) A liaison established with the cabinet. 
(2) A foster home may be approved to care for a medically-fragile child by a child-placing agency if the foster home:
(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff; 
(b) Completes, in addition to training specified in Section 5 of this administrative regulation:
1. Twenty-four (24) hours of cabinet training to include first aid and cardiopulmonary resuscitation (CPR) certification if the foster parent is not currently certified in first aid and CPR; or 
2. Sixteen (16) hours of cabinet training if the foster parent is currently certified in first aid and CPR; or 
3. [2] Training approved in advance by the cabinet, in the areas of: 
(a) Growth and development; 
(b) Nutrition; and 
(c) Medical disabilities; 
(c) Maintains certification in: 
1. [Cardiopulmonary resuscitation or CPR]; and 
2. First aid; 
(d) Is located within:
1. One (1) hour drive of a medical hospital with an emergency room; and 
2. Thirty (30) minute drive of a local medical facility; and 
(e) Is evaluated in accordance with Section 4(19) through (9) of this administrative regulation.
(3) Professional [health-care] experience related to the care of a medically-fragile child may substitute for the training requirement of the medically-fragile foster parent as specified in subsection (2)(a) and (c) of this section:
(a) Upon the approval by a designated cabinet staff, and 
(b) If the foster parent is a licensed health care professional, to include a: 
1. Physician as defined in KRS 311.720(9); 
2. Registered nurse as defined in KRS 314.011(5); 
3. Licensed practical nurse as defined in KRS 314.011(9); 
4. Physician's assistant as defined in KRS 311 840(5); or 
5. Advanced registered nurse practitioner as defined in KRS 314.11(7). 
(4) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medically-fragile child in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.
(5) An approved medically-fragile foster home may receive annual approval, if the foster home:
(a) [1] Annually completes the following amount [twenty-four (24) hours] of ongoing training in content areas specified by subsection (2)(b) and (c) of this section; 
1. Twelve-twenty-four (24) hours if the foster parent is not currently certified in first aid and CPR; or 
2. Sixteen (16) hours if the foster parent is currently certified in first aid and CPR; and 
(b) Completes the training[2] Does so] before the anniversary date of approval as a medically-fragile foster home; and 
(c) Continues to meet the requirements in Section 15 of this administrative regulation.
(6) Except for a sibling group or until approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent's own children, shall reside in a medically-fragile foster home.
(7) Unless approved by designated cabinet staff, a: 
(a) One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and 
(b) Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.
Section 11. Placement of a Medically-fragile Child. (1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.
(b) The training shall be conducted by a licensed health care professional, as specified in Section 10(3)(b) of this administrative regulation.
(2) A medically-fragile child shall be placed in an approved medically-fragile foster home. 
(3) A child-placing agency shall:
(a) Request [Submit a justification for] an exception to subsection (2) of this section in accordance with 922 KAR 1:350, Section 2(2); 
(b) Provide case management services: 
1. As described in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and 
2. In accordance with the child's: 
(a) Health plan developed by designated cabinet staff; [and] 
(b) ITP; and 
(c) Supervision plan; 
(d) Support the child's health plan developed by designated cabinet staff; and 
(d) Conduct a face-to-face visit with the child at least two (2) times per month.
Section 12. Expectations for a Foster Home, or Therapeutic Foster Care Home, or Medically-fragile Foster Home. An approved foster parent or therapeutic foster care parent shall:
(1) Provide a child placed by the child-placing agency with a family life, including:
(a) Nutritious food; 
(b) Clothing comparable in quality and variety to [of] that worn by other children with whom the child may associate; 
(c) Affection; 
(d) Training; 
(e) Recreational opportunities; 
(f) Education opportunities; 
(g) Nonmedical transportation; 
(f) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;
(i) Adequate supervision; and 
(f) Independent living services for a child twelve (12) years of age or older; 
(2) Permit a child-placing agency and [-if applicable] staff of a state agency[-which has custody of the child] to visit the home; 
(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed in the foster home;
(4) Notify the child-placing agency ten (10) days prior to the home being approved to provide foster or adoptive services through another private child-placing agency;
(5) Notify the child-placing agency prior to:
(a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or 
(b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than three (3) days; 
(6) Report immediately to the child-placing agency through which the child is placed, if there is:
(a) A life-threatening accident or illness; 
(b) An absence without official leave; 
(c) A suicide attempt; 
(d) Criminal activity by the child requiring notification of law enforcement; 
(e) Death; or 
(f) A child's possession of a deadly weapon; 
(7) Report, if applicable, within two (2) business days to the child-placing agency if there is:
(a) Change in address; 
(b) Change in the number of people living in the home; [as] 
(c) Significant change in circumstance in the foster home; or 
(d) Failure of the foster child or foster parent to comply with the supervision plan; 
(8) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:
(a) Visits;
(b) Telephone calls; or
(c) Mail;
(9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;
(10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.050 [1949-069] and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;
(11) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;
(12) Participate in a case planning conference concerning a child placed by the child-placing agency;
(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;
(14) Ensure that a child in the custody of the case worker receives the child's designated per diem allowance;
(15) Provide medical care to a child placed by the child-placing agency as needed, including:
(a) Administration of medication to the child and daily documentation of the administration; and
(b) Annual physicals and examinations for the child;
(16) Treat a child placed by the child-placing agency with dignity;
(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030, and
(18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that [which] has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-Fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.
(2) Respite care shall not be used as a means of placement for a child.
(3) Respite care shall be in accordance with Section 3(3) of this administrative regulation.
(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by law and administrative regulations specified in Section 4(3)(e), (g), and (n) through (v) of this administrative regulation.
(5) A respite care provider shall:
(a) Receive preparation for placement of a child, including:
1. Information in accordance with KRS 605.090(1)(b); and
2. Information regarding the supervision plan of the child;
(b) Provide adequate supervision in accordance with the child's supervision plan;
(c) Provide relief to the foster parent caring for a child; or
2. Provide for an adjustment period for a child.
(6) A respite care provider for a medically-fragile child shall meet the requirements of:
(a) Section 10(2)(b) through (d) or 10(3) of this administrative regulation; and
(b) Section 11(1) of this administrative regulation.

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency if a private placement is conducted:
(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain:
(a) Agreement for voluntary care signed by the custodian; or
(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.
(2) The child-placing agency shall:
(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and
(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs within thirty (30) days of the child's placement with the child-placing agency.
(b) The assessment shall be revised as needed.
(c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.
(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.
(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.
(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visits and reunification.
(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.
(b) Unless a circumstance precludes preparation and the circumstances is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.
(7) The child-placing agency shall:
(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;
(b) Assess and document the parent's capacity for reunification quarterly.
(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and
(d) Assure that foster care continues to be the best placement for the child.
(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.
(b) A reasonable effort shall be made to return the child to the family of origin.
(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:
(a) Family of origin;
(b) Treatment director;
(c) Social services worker; and
(d) Foster home.
(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:
1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and
2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.
(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.
(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.
(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.
(b) The family shall participate in planning for the child's return.
(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):
1. Prior visit between the child and the family; and
2. Preliminary visit of the child to the child's family home.
(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. Annually, a child-placing agency shall:
(1) Conduct a personal interview in the home with an approved:
(a) Adoptive home awaiting placement; or
(b) Foster home; and
(2) Assess:
(a) Any change in the home;
calendar days of a child’s placement with a child-placing agency in an independent living program, to include:
1. Educational, job training, housing, and independent living goals;
2. Objectives to accomplish a goal;
3. Methods of service delivery necessary to achieve a goal and an objective;
4. Person responsible for each activity;
5. Specific timeframes to achieve a goal and an objective;
6. Identification of a discharge plan;
7. Plan for aftercare services; and
8. Plan for services from a cooperating agency;
(c) Maintain written policies and procedures for the independent living program;
(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:
1. Content of the independent living curriculum;
2. Use of the independent living materials;
3. Application of the assessment tool; and
4. Documentation methods used by the child-placing agency;
and
(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a)(11) through (6), including:
1. Money management and consumer awareness;
2. Job search skills;
3. Job retention skills;
4. Educational planning;
5. Community resources;
6. Housing;
7. Transportation;
8. Emergency and safety skills;
9. Legal skills;
10. Interpersonal skills, including communication skills;
11. Health care, including nutrition;
12. Human development, including sexuality;
13. Food management, including food preparation;
14. Maintaining personal appearance;
15. Housekeeping;
16. Leisure activities;
17. Voting rights and registration;
18. Registration for selective service, if applicable;
19. Self-esteem;
20. Anger and stress management;
21. Problem-solving skills; and
22. Decision-making and planning skills.
(2) A social services worker from an independent living program shall:
(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program and provide supervision in accordance with the child’s supervision plan; and
(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child’s age; and
(c) Have:
1. Daily face-to-face contact with a child:
   a. Sixteen (16) to eighteen (18) years of age; and
   b. In the independent living program;
2. A minimum of one (1) face-to-face, in-home contact per week for a child:
   a. Eighteen (18) to twenty-one (21) years of age; and
   b. In the independent living program;
(d) Conduct a visual and exploratory review of a child’s living unit at least monthly, to include a review for:
1. Safety;
2. Use of alcohol; and
3. Legal contraband;
(e) Maintain a caseload of no more than ten (10) children, including independent living program;
1. Participants sixteen (16) to twenty-one (21) years of age; and
2. Participants’ children assigned a Level of Care of III or higher; and
(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.
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(3) (a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.
(b) Nonresidents shall be asked to vacate the living unit.
(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:
(a) Does not present a hazard to the health and safety of the child;
(b) Is well ventilated and heated; and
(c) Complies with state and local health requirements regarding water and sanitation.
(5) The child-placing agency shall maintain documentation for each child concerning:
(a) Assistance to the child in finding and keeping in touch with family, if possible;
(b) Health care and therapeutic services received by a child;
(c) Progress each child has made in the independent living program, including independent living services received;
(d) Progress in an educational program, including vocational education;
(e) An assessment of the child's readiness to live independently; and
(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.
(b) The child’s record and the foster home record shall show the reason for placement change and steps taken to ensure success.
(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.840, and 45 C.F.R. Parts 160 and 164.
(d) The record of the child, including information of the child's family, shall include:
(a) Identification information for child, parent, and foster home;
(b) Commitment order or custodian's consent for admission;
(c) Birth and Immunization certificate;
(d) Educational record;
(e) Medical and dental record since placement;
(f) Social history and assessment;
(g) ITP and review;
(h) Supervision plan and updates to the plan;
(i) Permanency goals, including independent living services;
(l) [ll] Incident reports, including details of the child's behavior and supervision at the time of the incident;
[(l) (ll)] Monthly progress notes based on the ITP and supervision plan;
[(l) (ll)] Quarterly revisions to the child’s ITP;
(m) [ll] Correspondence with the:
1. Court;
2. Family;
3. Department for Community Based Services; or
4. Department of Juvenile Justice;
(n) Discharge report; and
(g) [nn] Aftercare plan.
(3) The foster home's record shall include documentation relating to the:
(a) Orientation and preparation of the home, including all adult caregivers in the household;
(b) Required preparation hours and the topics covered;
(c) Placement of the child;
(d) Narrative summary of the initial and annual foster home's home study;
(e) Supervision of the foster home, including critical incidents;
(f) Annual training requirements that are met in accordance with Section 5(3) of this administrative regulation by the foster parent and all adult caregivers in the household; or
(g) Background checks in accordance with Sections [Section] 4(3)(n) and 15(20)(c) of this administrative regulation; and
(h) A copy of the written statement of the foster home's closure completed pursuant to Section 23(3) of this administrative regulation.
(4) A child-placing agency shall:
(a) Maintain a child or foster home's record for at least three years;
(b) After three (3) years:
1. Archive the record and have it transferred by the cabinet to one (1) of the cabinet's designated record centers; or
2. Maintain the record permanently at the child-placing facility;
(c) Transfer the record to the cabinet if:
1. The agency ceases operations; and
2. No other operational governing entity exists; and
(d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 19. Orientation and Preparation of an Adoptive Home. A child-placing agency shall:
(1) Prepare and maintain the orientation and preparation curriculum on file.
(c) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:
(a) An example of an actual experience from a parent who has adopted a child;
(b) Challenging behavior characteristics of an adoptive older child;
(c) Referral resources for a developmental delay;
(d) Transition issues with focus on stages of grief, and a honeymoon period;
(e) Loss and the long-term effects on a child;
(f) Attachment and identity issues of the child;
(g) Cultural competency;
(h) Medical issues including referral resources;
(i) Family functioning, family values, and expectations of an adoptive home;
(j) Identification of changes that may occur in the family unit upon the placement of a child to include:
1. Family adjustment and disruption;
2. Identity issues; and
3. Discipline; and
(k) Financial assistance available to an adoptive home; and
(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:
(a) Adoptive home has been approved;
(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and
(c) Child is placed with the child-placing agency for the purpose of adoption placement.
(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.
(3)(a) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.
(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.
(4) The following shall be obtained by the child-placing agency:
(a) A developmental history of the adoptive child to include:
1. Birth and health history;
2. Early development;
3. Characteristic ways the child responds to people and situations;
4. Any deviation from the range of normal development;
5. The experiences of the child prior to the decision to place the child for adoption;
6. Maternal attitude during pregnancy and early infancy;
7. Continuity of parental care and affection;
8. Out-of-home placement history;
9. Separation experiences; and
10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background.

That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;
(b) A social history of the biological or legal parent, to include:
1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion or faith; and
6. Occupation;
(c) Information obtained from direct study and observation of the child by:
1. Social services worker; and
2. Physician or other licensed health care professional;
(d) If indicated, Information obtained from direct study and observation of the child by a (and, if indicated,)
 1. Foster parent (home);
 2. Nurse;
 3. Psychologist; or (and)
 4. Other consultants, and
 5. Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:
1. Determining the father's parental rights; and
2. Establishing of possible hereditary endowments.

5. Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.

6. If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

7. Prior to finalization of the adoptive placement, a medical examination shall be made by a licensed physician or other licensed health professional to determine:
(a) The state of the child's health;
(b) Any significant factor that may interfere with normal development; and
(c) The implications of any medical problem.

8. The condition under which an adoptive home agrees to accept the child shall be disclosed upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:
(a) The adoptive home shall agree to:
1. Comply with KRS 199.470;
2. File an adoptive petition at a time agreeable to the adoptive home (them) and the child-placing agency; and
3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:
   a. After placement; and
   b. Preceding a final judgment of adoption by the circuit court;
(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:
1. Background;
2. Medical history;
3. Current behavior; and
4. Medical information necessary to comply with KRS 199.520(4)(a); and
(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

9. (a) Preplacement visits shall be arranged for the adoptive home and a child.
   (b) The pattern and number of visits shall be based on the child's:
1. Age;
2. Development; and

10. During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

11. (a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.
   (b) If siblings have been separated in placements:
1. The case record shall reflect a valid basis for the separation,
2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and
3. Continued contact between siblings shall be maintained, if possible.

12. A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;
(b) The continuation of case management, visit, and telephone contacts based upon the needs of the child until the adoption is legally granted; and
(c) Awareness of a change in the adoptive home including health, education, or behavior.

2. Upon request of the cabinet, the child-placing agency shall:
(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;
(b) Prepare and provide the original confidential report to the court; and
(c) Forward to the cabinet a copy of:
1. The confidential report that was provided to the court; and
2. Information required by KRS 199.520 and 199.572.

3. If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care, and the child's family; and
(b) An adoptive applicant.

2. The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:
(a) Information and documents needed by the court;
(b) Information about the child and the child's family;
(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and
(d) Information gathered during the intake process including the following:
1. A description of the situation that necessitated placement of the child away from the child's family, or termination of parental rights;
2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;
3. Verification of the child's birth record and the registration number;
4. A copy of the child's medical record up to the time of placement;
5. A copy of the required evaluation of the adoptive placement;
6. Date of adoptive placement;
7. A statement of the basis for the selection of this adoptive home for the child;
8. A record of after-placement services with dates of:
   a. Visits;
   b. Contacts;
   c. Observations;
   d. Filing of petition;
   e. Granting of judgments; and
   f. Other significant court proceedings relative to the adoption;
9. Child's adoptive name; and
10. Verification of preparation and orientation and annual training in accordance with Section 12 [6] of this administrative regulation.

   (3) If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

   (4) Records on adoption that contain pertinent information shall be:
   (a) Maintained indefinitely following final placement of a child; and
   (b) Sealed and secured from unauthorized scrutiny.

   (5) A child-placing agency shall submit adoptive case records to the cabinet, if:
   (a) The child-placing agency closes; and
   (b) No other operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home.
(1) A foster or adoptive home shall be closed if:
   (a) Sexual abuse or exploitation by a resident of the household is substantiated;
   (b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;
   (c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in [by] the home; or
   (d) The home fails to meet requirements of this administrative regulation in:
       1. Section 4(3)(h), (i), and (l) through (v), and Section 4(5)(f)(6) through (11) [(6)] of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;
       2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;
       3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and
       4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

   (2) A foster or adoptive home may be closed:
   (a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or
   (b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

   (3) The child-placing agency shall provide the foster or adoptive parent a written closure statement to include:
   (a) Date of approval and termination; and
   (b) Indication of whether the closure was at the request of the foster parents or the agency.

Section 24. Foster Care Registry. (1) [Upon the effective date of this administrative regulation.] A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes.

   (2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:
   (a) The foster parents: [parents]:
       1. Full name;
       2. Social Security number; and
       3. Address, including county of residence;
COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)
NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.020(8) the council sets the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. The administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions.

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.
(2) "Council" is the Council on Postsecondary Education established by KRS 164.011 [defined by KRS 164.001(7)].
(3) "Foreign language" means a language that is not the primary language used at home.
(4) "Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(11) [KRS 164.001(40)].
(4)(6) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(11).
(5)(6) "Program of Studies" means the document "Program of Studies for Kentucky Schools-Grades Primary-12" [adopted published] by the Kentucky Board of Education.
(6)(7) "Developmental course (remedial course)" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.
(6)(7) "System-wide standard" means an ACT Assessment sub-score (a score) of eighteen (18) in [or above on a mathematics, English, nineteen (19) in mathematics, or twenty-one (21) in reading [or reading subscale of the ACT Assessment].

Section 2. Minimum Qualifications for Institutional Admission as First-time Students [Freshmen]. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant seeking to enter a community and technical college shall have fulfilled the minimum requirements for admission to a degree program established by the Kentucky Community and Technical College System consistent with the administrative regulation [at a community or technical college or to a community college-type program at a university] if the applicant has:
1. Graduated from a public high school or a certified nonpublic high school;
2. Earned a high school general equivalency certificate (GED).
(b) The Kentucky Community and Technical College System may exempt a student who is eligible to pursue a GED from the requirements of paragraph (a) of this subsection.
(c) An applicant to a community-college type program at a university shall take the ACT Assessment.
1. Have satisfied the minimum requirements for admission to a (two year degree program established by the admitting institution consistent with this administrative regulation; and
2. Take the ACT Assessment.
(2)(a) Except as provided in paragraph (b) of this subsection, and applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:
1. Graduated from a public high school or a certified nonpublic high school;
2. Completed the precollege curriculum established in Section 3 of this administrative regulation, and
3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency certificate (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at levels (a level on the subtests) established by a [the] university. An applicant shall satisfy the provisions of paragraph (2) of this subsection by taking the ACT Assessment and by scoring at levels (on the ACT Assessment subtests that are) established by a university.
(3) Notwithstanding the provisions of subsection (1) and (2) of this section, a university may substitute the SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for an adult student [student].
(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic school and completed a course of study. Noncertified nonpublic schools shall include a home school.
(5)(a) A nonresident seeking admission to a baccalaureate degree program at a university shall complete:
(a) [4] The ACT recommended core college courses for the precollege curriculum which is listed in the Benefits of a High School Core Curriculum, ACT 2006 (ACT High School Profile Report: High School-Graduating Class of 1999); or
(b) [3] A college preparatory curriculum comparable to Kentucky's precollege curriculum.
(c) Except as provided in Section 2(10)(a) of this administrating regulation, a nonresident shall meet the same minimum qualifications for admission as a Kentucky resident as established in subsections (1) through (4) of this section.
(6)(a) A university may, under extenuating circumstances, admit a student who has not satisfied the testing requirements of subsection (2)(a) of this section if the university has a written policy defining extenuating circumstances.
(b) If a university admits a student under paragraph (a) of this subsection, the student shall satisfy the provisions of subsection (2)(a) of this section during the first semester of enrollment.
(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

Section 3. Precollege Curriculum. (1) Effective for the fall semester of 2000, an applicant to a baccalaureate degree program at an institution shall complete twenty (20) or more advanced high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following courses and source of study and is based on the Program of Studies:
(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.
(b) Three (3) units of high school study in mathematics, including algebra I, algebra II, and geometry. This mathematics requirement may be met by completing the integrated mathematics series consisting of three (3) units.
(c) Two (2) units of high school study in science, biology I and either chemistry I or physics I. At least one (1) science course shall be a laboratory course.
(d) Two (2) units of high school study in social studies, that shall include world civilization and either U.S. History or AP American History.
(e) A college-bound student is encouraged to take, as part of the elective course selection, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy.
(f) A substitution shall not be made for any course identified in the subsection unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.
(2) Effective for the fall semester of 2002, an applicant to a baccalaureate degree program at an institution shall complete...
twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study [and is based on the Program of Studies].

(a) Four (4) units of high school study in English/language arts, specifically, including English I, English II, English III, and English IV or AP English.

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including algebra I, algebra II, and geometry.

1. An integrated, applied, interdisciplinary, or technical/commercial course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies and the Core Content for Assessment both incorporated herein by reference.

2. A student may substitute for algebra I a mathematics course whose content is more rigorous [than that described in the Program of Studies].

3.[22] Algebra II may be taken prior to high school and counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies and the Core Content for Assessment [that listed in the Program of Studies and Core Content for Mathematics, High School Version 4.1:2006, herein incorporated by reference].

4. Algebra II shall include the content and skills described in the Common Core State Standards in Mathematics, High School—Algebra II (2010).

5. Algebra II shall include the content and skills described in the Common Core State Standards in Mathematics, High School—Geometry (2010).

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course.

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.

(e) One-half (1/2) unit in health education.

(f) One-half (1/2) unit in physical education.

(g) One (1) unit in history and appreciation of visual and performing arts.

(h) [Effective with fall semester 2004, an applicant shall:

4. Complete Two (2) units in the same foreign language unless the applicant's local school has:

1.[a] Diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1 280 or 707 KAR 1:310, and

2.[b] Determined that the learning disability precludes the student from successfully completing a foreign language course; or

3. The applicant demonstrated[4–Demonstrated] linguistic competency and awareness of a foreign language at least equivalent to two (2) years of high school language; or

4. Complete two (2) units of English as a second language (ELS)]

3.[a] Beginning with fall semester 2002 through the academic year 2003–2004, a student shall, in addition to the requirements of subsection (2) of this section, take seven (7) electives. Five (5) of the seven (7) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in an approved area.

1. Social studies.


4. English/language arts.

5. Foreign languages.

6. Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

7. Foreign language.

8. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health education, technology education, and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4:090.

A college-bound student is encouraged to take, as part of an elective course selection, additional coursework in mathematics, sciences, and arts.

(b) Beginning with the fall semester 2004,

1. In addition to the requirements of subsection (1) of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies.

(b) Science.

(c) Mathematics.

(d) English/language arts.

(e) Arts and humanities.

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

(g) Foreign language.

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health education, technology education and career pathways. [An approved area of study set forth in paragraph (a) through (b) of this section.

3.[4][a] A student may substitute an integrated, applied, interdisciplinary, or higher level course within a program of study for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

[(3)[4][a] Integrated mathematics courses are intended to be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

4.[4][a] An institution may establish additional requirements to supplement this minimum academic preparation.

5.[4][a] A waiver of a required precollege curriculum course may be justified if:

1. A student is physically unable to complete a course because of a physical handicap,

2. A student's handicapping condition is verified through appropriate documentation; and

3. The school district superintendent or designee [or designee] verifies that a student's handicapping condition will prevent the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3.305, Section 3(2)(4)(c).

6.[4][a] A course selection is tied to the Program of Studies and the Individual Course Descriptions contained in that document. For guidance in the selection of a specific course, a counselor may consult the [Program of Studies and] Council materials on the precollege curriculum.

7.[4][a] Each[[8]] institution shall determine whether an applicant has met these minimum academic preparation requirements.

8.[4][a] The precollege curriculum requirement shall apply to:

(a) A first-time student [freshman] pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate-degree level to baccalaureate-degree level, or [and]

(d) A student who, transferring from another institution, has been admitted to baccalaureate-degree status by the receiving institution.

9.[4][a] The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their de-
pendents;
(d) A student enrolled in a community or technical college or a
community college type program at a university;
(e) A nonresident student because he or she is subject to the
provisions of Section 2(6), or
(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university
shall have the option of admitting conditionally a first-time stu-
dent [freshman] applicant to a baccalaureate degree program who
has not met the requirements of Section 3 of this administrative
regulation. A first-time student [freshman] admitted conditionally
shall remove or otherwise satisfy [all] academic deficiencies in a
manner and time period established by the enrolling institution
(2) An institution enrolling students in a baccalaureate degree
program under the conditional admission provisions in subsection
(1) of this section shall admit conditionally each academic term no
more than five (5) percent of a base figure. The base figure shall
be the average number of students reported as enrolled with bac-
calaureate-degree status over the preceding four (4) years.
(3) Although not subject to the precollege curriculum for ad-
mission purposes, the precollege curriculum status of students
enrolled in a community college-type program in a university shall
be assessed and reported to the Council on Postsecondary Educa-
tion.
(4) An applicant of superior ability, as demonstrated by excep-
tional academic achievement, a high ACT Assessment score, and
social maturity, may be granted early admission. An applicant
granted early admission by an institution shall be exempt from the
provisions of Sections 2 and 3 of this administrative regulation.
(5) At the discretion of the institution, a person who does not
meet college entrance requirements, including high school stu-
dents, may enroll in college courses as a nondegree student.

Section 5. Transfer Students. (1) The council's general educa-
tion transfer policy and program specific agreements [baccalaure-
ate-program-transfer framework policy] shall direct [provide the
base for] an institution's policy on the acceptance of transfer cre-
dits: [The American Association of Collegiate Registrars and Admis-
sion Officers' 'Transfer Credit: Practices of Educational Institu-
tions' shall serve as a reference for admission of transfer students
to an institution and for the acceptance of transfer credits.]
(2) An [A state-supported] institution shall assure that a trans-
ferring student receives academic counseling concerning the trans-
fer of credit among institutions.
(3) An institution, consistent with the provisions of subsection
(1) of this section, shall accept a student's college credit earned
when a course is taken both for high school credit and college
credit. Credit earned through a dual enrollment arrangement shall
be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The
assessment and placement policy of the council [shall be effective
with the fall semester of 2004] and shall apply to
(a) A first-time student [freshman] enrolled in an associate or
baccalaureate degree program or a certificate or diploma program
at an Institution,
(b) A student who transfers from a degree program at one (1)
institution into a [baccalaureate] degree program at another institu-
tion and who has not taken and successfully passed college-level
courses in mathematics and English;
(c) A student who transfers from a certificate or diploma pro-
gram into a degree program and who has not taken and success-
fully passed college-level courses in mathematics and English;
(d) A student converting from nondegree status to degree
status who has not taken and successfully passed college-level
courses in mathematics and English;
(2) A nondegree-seeking student shall be exempt from system-
wide mandatory assessment and placement policies.
(3) Except as provided in subsection (11) of this section,
an institution [A university] shall use the ACT Assessment to
evaluate student competencies in mathematics, English, and read-
ing. An institution [A university] may accept scores on the SAT in
lieu of the ACT Assessment for placement in college-level courses.
(4) An institution shall, where a student it determined to have
did not meet the systemwide standards for readiness, use a placement
exam [A university may use an institutional placement exam as a
supplement to the ACT Assessment] to help place a student in the proper
course.
(5) An institution [A university] shall place a student who scores
below the system-wide standard in mathematics, English, or reading in an:
(a) [—] Appropriate developmental [remedial] course in the
relevant discipline; or
(b) [—] Entry-level college course, if the course offers supple-
mentary academic support, such as extra class sessions, addi-
tional labs, tutoring, and increased monitoring of students, beyond
that usually associated with an entry-level course.
(b) A university may set a cut-off score above the system-wide
standard to place a student.
(6) Effective with the fall semester of 2009, an institution shall
satisfy the provisions of subsection (5)(d) of this section by plac-
ing a student in the appropriate developmental course [or dis-
seminar] or entry-level college course in the first term that a student is
enrolled.
(7)a) A student shall not be required to enroll in a develop-
mental course in English if the student has a score on the ACT
Assessment of eighteen (18) or higher in English. The student shall
be permitted to enroll in a credit-bearing writing course.
(b) A student shall not be required to enroll in a developmental
course in Mathematics if the student has a score on the ACT
Assessment of nineteen (19) or higher in Mathematics. A student
who scores between nineteen (19) and twenty-one (21) shall be
permitted to enroll in a credit-bearing mathematics course.
1. A student who scores twenty-two (22) through twenty-six
(26) on the ACT Assessment in Mathematics shall be permitted to
enroll in a credit-bearing algebra course.
. A student who scores twenty-seven (27) or higher on the
ACT Assessment in Mathematics shall be permitted to enroll in a
credit-bearing calculus course.
(c) A student who demonstrates a level of competence by
achieving the standards in the Kentucky Statewide College-
Readiness Standards (incorporated by reference), and the scores
contained in paragraph (a) or (b) in guaranteed placement in credit-
bearing coursework, but is not guaranteed admission to a univer-

(8)(a) An adult student who has been admitted without the
ACT Assessment test or the SAT may be placed into an appropria-
te course using
(a) The ACT Residual Test;
(b) The ASSET Testing Program;
(c) The COMPASS Testing Program;
(d) The ACCUPLACER Testing Program; or
(e) An institutional placement test.
(9) An institution [A university] shall be responsible for de-
termining the remediation required including the number of reme-
dial courses required, if necessary.
(10) Provided, however that effective with the fall semester of
2009, an institution shall enroll a student who scores below the
statewide standards in appropriate developmental [or) remedial-
techniques] consecutively until readiness for credit-bearing courses
has been demonstrated. An institution shall also ensure that a
student who completes a developmental or supplemental course
shall immediately enroll in a credit-bearing course in that subject or
discipline, or, in the case of reading, an appropriate course work
requiring college-level reading skills.

[11] (a) KCTCS shall select campus placement tests for the
community and technical colleges that assess mathematics, Eng-
lish, and reading skills. [This requirement also shall apply to the
Lexington Community Colleges.
(b) KCTCS shall ensure that the same campus—placement
tests be used by the Regional College Branch and the Commu-

[12] (a) The KCTCS [and the Lexington Community Colleges]
shall place a degree-seeking student who scores below the sys-

- 592 -
terwide standard in mathematics, English, or reading in an:
(a) Appropriate developmental [remedial] course in the relevant discipline; or
(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(10) KCTCS shall develop guidelines for use at the community college level that will determine the remediation required in mathematics, English, or reading based upon placement test scores. The requirement also shall apply to the Lexington Community College.

(11) KCTCS shall develop assessment and placement policies for students who enroll in certificate and diploma programs.

(a) For each certificate and diploma program, KCTCS shall determine the proper cut-off scores for placing students and the standards for exiting remedial instruction.

(b) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading.

Effective with the spring semester 2001, an institution shall report to the council data that monitors the performance of first-time students [freshmen] in developmental [remedial] and entry-level courses. The core elements of the first-time students [freshmen] performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;
(b) Institutional placement exam results;
(c) Information that identifies whether a course is developmental [remedial], entry-level, or entry-level with supplementary academic support provided; and
(d) Grades in developmental [remedial] and entry-level courses.

Section 7. Incorporation by Reference. (1) The following materials are incorporated by reference.

(a) The "Program of Studies for Kentucky Schools: Graduates in the 21st Century" [ALBE 2000]; [Grades Primary-12th], revised 2000
(b) Kentucky Department of Education;

(b) Core Content for [Mathematics] Assessment, Version 4.1, 2006 [9-12, 1999], Kentucky Department of Education;

(c) "General Education Transfer Policy", 2004 [1996], Council on Postsecondary Education;

(d) Benefits of a High School Core Curriculum (ACT 2006);

(e) "Assurance Program or Transfer Framework", 2000-2001, Council on Postsecondary Education;

(f) Kentucky Statewide College-Readiness Standards; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capitol Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS D. LAYZELL, President
DENNIS L. TAULBEE, General Counsel
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 14, 2007 at 11 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sherri Noelx

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the minimum requirements for admission to state-supported institutions and presents new standards for the assessment and placement of students in developmental programs. The administrative regulation also sets out the requirements for acceptance of transfer courses and mandates that transfer students receive academic counseling.

(b) The necessity of this administrative regulation: KRS 154.020(8) authorizes the Council on Postsecondary Education to set minimum admissions requirements for the state-supported postsecondary education system.

(c) How this administrative regulation conforms to the content of the governing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidance to high school students and parents, K-12 guidance counselors, and other local school officials on what courses and other requirements are necessary for someone to enter a Kentucky state-supported postsecondary education institution. The administrative regulation clarifies standards for college readiness and requires assessment of students, particularly in English, reading and mathematics.

(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 aligns the existing precollege curriculum with the new, more rigorous high school curriculum standards adopted by the Kentucky Department of Education. The proposed changes increase the statewide standards on the ACT in order to avoid placement in developmental education. Students who demonstrate proficiency by scoring at the statewide standard are guaranteed placement in the appropriate credit-bearing course.

(b) The necessity of the amendment to this administrative regulation: The Council on Postsecondary Education is committed to increasing retention and graduation rates at the state-supported postsecondary education institutions. The recent findings of the Statewide Developmental Education Task Force recommend that standards for readiness be increased to more accurately reflect the level of preparation needed to succeed in college-level coursework.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The purpose of the statutory provision for the Council on Postsecondary education to set minimum readiness standards supports the Council's strategic agenda calling for a significant increase in college graduates.

(e) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: The primary individuals and organizations affected by this regulation are public postsecondary education institutions, local school district officials, the Kentucky Department of Education, and prospective students and their parents.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The local school districts and the Kentucky Department of Education will have clearer guidelines on the requirements for admission to college in Kentucky and student readiness. High school students and their parents will have clear guidelines on statewide readiness standards for college work. Postsecondary education institutions also will have clear guidelines for addressing the needs of underprepared students.

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

(a) Initially: No additional cost at the local schools since implementation will occur with existing personnel. At the university level, and at the Kentucky Community and Technical College System, there will be some additional cost as a result of increasing numbers of developmental education students served. The institutions already provide developmental education services. Preliminary estimates place the cost of these changes at $5.4 million. Many of the students are currently enrolled in the institutions; funds can be reallocated within institutional budgets to accommodate additional services and the Council will continue to work with the institutions to further refine cost figures. If the Council determines that sufficient funds are not available through reallocation, a biennial budget request could be advanced for the 2008-10 biennium.
(b) On a continuing basis: No additional cost at the local schools since implementation will occur with existing personnel. At the university level, and at the Kentucky Community and Technical College System, costs are expected to decline over time as more students meet the readiness standards with implementation of the clear statewide standard for college readiness. Included in the this administrative regulation, the implementation of the ACT service EPAS testing system in middle/high schools allowing early interventions to help students meet these standards, and the outcome-based reforms of Kentucky Adult Education. The overall investment to improve student readiness and the effectiveness of post-secondary education developmental education programs will result in higher retention and graduation rates of enrolled undergraduates resulting in greater productivity and efficiency in the postsecondary system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds and university funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)


RELATES TO: KRS 224 10-100, 224.20-100, 224.20-110, 224.20-120, 24 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [require] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [establishes] a separate, but related, the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 61.01 through [to] 61.139 and 61.160 through [to] 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(b).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61.01 through 61.139 and 61.160 through 61.358. Subparts A through L and N through FF. [For purposes of 40 C.F.R. 61.01-61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 61.01 through [to] 61.139 and 61.160 through [to] 61.358, Subparts A through L and N through FE (Subparts A to L and N to FF). These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 61.01 through [to] 61.139 (Subpart A), "General Provisions";

(2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 61, Appendices A through E; and

(3) The applicable Part 61 NESHAP.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2003:

(a) 40 C.F.R. 61.01 to 61.10 (Subpart A), "General Provisions";

(b) 40 C.F.R. 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines";

(c) 40 C.F.R. 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium";

(d) 40 C.F.R. 61.40 to 61.44 (Subpart D), "National Emission Standards for Beryllium Rocket Motor Firing";

(e) 40 C.F.R. 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury";

(f) 40 C.F.R. 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride";

(g) 40 C.F.R. 61.80 to 61.87 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities";

(h) 40 C.F.R. 61.100 to 61.105 (Subpart L), "National Emission Standards for Radon Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H";

(i) 40 C.F.R. 61.110 to 61.113 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Source) of Benzene";

(j) 40 C.F.R. 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants";

(k) 40 C.F.R. 61.130 to 61.139 (Subpart L), "National Emission Standards for Benzene Emissions from Coke By-Product Recovery Plants";

(l) 40 C.F.R. 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants";

(m) 40 C.F.R. 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters";

(n) 40 C.F.R. 61.180 to 61.185 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions From Arsenic-Trioxide and Metallic Arsenic Production Facilities";

(o) 40 C.F.R. 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities";

(p) 40 C.F.R. 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks";

(q) 40 C.F.R. 61.220 to 61.225 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings";

(r) 40 C.F.R. 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Source)";

(s) 40 C.F.R. 61.250 to 61.266 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings";

(t) 40 C.F.R. 61.270 to 61.277 (Subpart X), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels";

(u) 40 C.F.R. 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations";

(v) 40 C.F.R. 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations";

(w) Appendix A to Part 61, "National Emission Standards for Hazardous Air Pollutants, Compliance Status Information";

(x) Appendix B to Part 61, "Test Methods";

(y) Appendix C to Part 61, "Quality Assurance Procedures";

(z) Appendix D to Part 61, "Methods for Estimating Radionuclide Emissions"; and
enforces the federal Part 61 NESHAP rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 61 requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of hazardous air pollutants as defined in 40 C.F.R. Part 61 are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 61 NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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: Regulated entities shall comply with the federal Part 61 NESHAP requirements and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities are already subject to the federal Part 61 NESHAP. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 61 NESHAP will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether the administrative body established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 61 NESHAP source categories.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: According to the delegation provisions under 42 U.S.C. 7412(i), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 61 NESHAP for stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 7412 requires that the U.S. EPA promulgate National Emission Standards for Hazardous Air Pollutants. These NESHAP standards and requirements for compliance are codified in 40 C.F.R. 61.01 through 61.139 and 61.160 through 61.358.
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4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement 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 affecting the content of this administrative regulation will be impacted by this administrative regulation? The Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602.

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 of the administrative regulation and for subsequent years. This regulation generates no revenues.

5. How much revenue will this administrative regulation generate for the state or local government? No.

6. How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

7. How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection

Division for Air Quality

(Amended After Comments)


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.20-330, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601;


Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157, Subpart M. [For purposes of 40 C.F.R. 61.140 through 61.157, Subpart M—Administrator means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157, Subpart M.]

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 61.140 through [to] 61.157, Subpart M. Owners and contractors of these sources shall comply with the following:


2. The applicable provisions in 40 C.F.R. 61.140 through [to] 61.157, Subpart M, "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations;" and

3. Complete and submit Form DEP 7038 to the Division for Air Quality prior to renovation or demolition. This form is incorporated by reference in Section 3 of this administrative regulation. [The applicable revisions in "Part 61-Subpart M Amended-"

Section 3. Incorporation by Reference. (1) "Form DEP 7038, Notification of Asbestos Abatement/Demolition/Renovation, May 1998," is incorporated by reference. [The following material is incorporated by reference:

(a) 40 C.F.R. 61.140 through 61.157, Subpart M, "National Emission Standard for Asbestos;" and Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations; as published July 1, 2003;

(b) "Part 61-Subpart M Amended," as published 68 Fed.Reg. 54793, September 18, 2003; and

(c) "Form DEP 7038, Notification of Asbestos Abatement/Demolition/Renovation, May 1998," as incorporated by reference in Section 3 of this administrative regulation.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wofolhan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 745-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2060;

(g) Owensboro Field Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 899-8468.


LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation adopts the National Emission Standards for Hazardous Air Pollutants, Part 61 NESHAP, Subpart M, codified in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, which contains the Asbestos NESHAP source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 61 Asbestos NESHAP and to comply with the requirements in KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(9) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently exists or will assist in the effective administration of the statutes. Sources that are subject to the federal Part 61 Asbestos NESHAP requirements shall comply with this administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment revises the text according to KRS 13A. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS 13A.2261 require agencies to adopt new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 61 Asbestos NESHAP requirements. In order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 61, Subpart M requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are subject to the Part 61 Asbestos NESHAP as defined in 40 C.F.R. Part 61, Subpart M are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment of how the entities identified in question (5) will be impacted by this implementation of this administrative regulation. If new, or by the change if it is an amendment: Sources subject to the Part 61 Asbestos NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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: Regulated entities shall comply with the federal Part 61 Asbestos NESHAP and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities are already subject to the federal Part 61 Asbestos NESHAP. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 61 Asbestos NESHAP will continue to work with the Commonwealth rather than the federal government. The administrative agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will be no additional continuing costs for the implementation of this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(9) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(6) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 61 NESHAP for Asbestos.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7412(f), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Asbestos NESHAP.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(9), 224.20-100, 224.20-110, and 224.20-120.


4. Will this administrative regulation impose stricter requirements than the federal mandate? No. This regulation is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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 Division for Air Quality will implement this program. Any unit, part or division of state or local government that intends to be involved in asbestos renovation or demolition will be subject to this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(9), 224.20-100, 224.20-110, 224.20-120, 224.20-120, 224.20-130, 224.20-320, 224.93-100, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

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 regula-
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with the following:
(1) The applicable provisions in 40 C.F.R. 60.1 through [to] 60.19 (Subpart A), "General Provisions";
(2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 60, Appendices A through F;
(3) The applicable Part 60 NSPS.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Federal Regulations, 40 C.F.R. Part 60, as follows:
(a) 40 C.F.R. 60.1 to 60.19 (Subpart A), "General Provisions";
(b) 40 C.F.R. 60.40 to 60.46 (Subpart D), "Standards of Performance for Fossil Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971";
(c) 40 C.F.R. 60.40a to 60.49a (Subpart Da), "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1972";
(d) 40 C.F.R. 60.40b to 60.43b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units";
(e) 40 C.F.R. 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small-Industrial-Commercial-Institutional Steam Generating Units";
(f) 40 C.F.R. 60.50a to 60.54a (Subpart E), "Standards of Performance for Incinerators";
(g) 40 C.F.R. 60.50b to 60.52b (Subpart Ea), "Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1983 and On or Before September 29, 1984";
(h) 40 C.F.R. 60.50b to 60.52b (Subpart Eb), "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 29, 1984 or For Which Modification or Reconstruction is Commenced After June 19, 1986";
(i) 40 C.F.R. 60.50b to 60.52b (Subpart Ec), "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1986";
(j) 40 C.F.R. 60.60 to 60.65 (Subpart F), "Standards of Performance for Portland Cement Plants";
(k) 40 C.F.R. 60.70 to 60.71 (Subpart G), "Standards of Performance for Nitro Acid Plants";
(l) 40 C.F.R. 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants";
(m) 40 C.F.R. 60.90 to 60.92 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities";
(n) 40 C.F.R. 60.100 to 60.105 (Subpart J), "Standards of Performance for Petroleum Refineries";
(o) 40 C.F.R. 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 1, 1979, and Prior to May 16, 1984";
(p) 40 C.F.R. 60.110 to 60.115 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 16, 1978, and Prior to July 23, 1984";
(q) 40 C.F.R. 60.110b to 60.117b (Subpart K), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984;
(r) 40 C.F.R. 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters";
(s) 40 C.F.R. 60.120 to 60.123 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants";
(t) 40 C.F.R. 60.140 to 60.144 (Subpart M), "Standards of Performance for Primary Emissions from Basic Oxygen Furnaces for Which Construction is Commenced After June 11, 1977";
(u) 40 C.F.R. 60.140 to 60.145 (Subpart N), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Stooking Facilities for Which Construction is Commenced After January 20, 1983";
(v) 40 C.F.R. 60.160 to 60.165 (Subpart O), "Standards of Performance for Sewage Treatment Plants";
(w) 40 C.F.R. 60.160 to 60.165 (Subpart P), "Standards of Performance for Municipal Wastewater Facilities".

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 60.1 through [to] 60.19, 60.40 through [te] 60.506, 60.540 through [te] 60.668, and 60.880 through 60.4420, Subparts A, D through XX, BBB through NNN, and PPP through DDDD. These sources shall comply.
Performance of Primary-Copper Smelters;  
(x) 40 C.F.R. 60.170 to 60.176 (Subpart Q). Standards of Performance for Primary-Zine Smelters;  
(y) 40 C.F.R. 60.180 to 60.186 (Subpart R). Standards of Performance for Primary Lead Smelters;  
(z) 40 C.F.R. 60.190 to 60.195 (Subpart S). Standards of Performance for Primary Aluminum Reduction Plants;  
(aa) 40 C.F.R. 60.200 to 60.204 (Subpart T). Standards of Performance for the Phosphate Fertilizer Industry-Wet-Process Phosphate Acid Plants;  
(bb) 40 C.F.R. 60.210 to 60.214 (Subpart U). Standards of Performance for the Phosphate Fertilizer Industry—Superphosphate Acid Plants;  
(cc) 40 C.F.R. 60.220 to 60.224 (Subpart V). Standards of Performance for the Phosphate Fertilizer Industry—Diammonium Phosphate Plants;  
(dd) 40 C.F.R. 60.230 to 60.234 (Subpart W). Standards of Performance for the Phosphate Fertilizer Industry—Triple-Superphosphate Plants;  
(ee) 40 C.F.R. 60.240 to 60.244 (Subpart X). Standards of Performance for the Phosphate Fertilizer Industry—Granular-Triple-Superphosphate Storage Facilities;  
(ff) 40 C.F.R. 60.250 to 60.254 (Subpart Y). Standards of Performance for Coal Preparation Plants;  
(gg) 40 C.F.R. 60.260 to 60.266 (Subpart Z). Standards of Performance for Ferroalloy Production Facilities;  
(hh) 40 C.F.R. 60.270 to 60.276 (Subpart AA). Standards of Performance for Steel Plants: Electrc Arc Furnaces—Constructed After October 21, 1974, and On or Before August 17, 1983;  
(ii) 40 C.F.R. 60.270 to 60.276 (Subpart BB). Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization—Vessels—Constructed After August 17, 1983;  
(jj) 40 C.F.R. 60.280 to 60.286 (Subpart BB). Standards of Performance for Kraft Pulp Mills;  
(kk) 40 C.F.R. 60.290 to 60.296 (Subpart CC). Standards of Performance for Glass Manufacturing Plants;  
(ll) 40 C.F.R. 60.300 to 60.304 (Subpart DD). Standards of Performance for Grain Elevators;  
(mm) 40 C.F.R. 60.310 to 60.316 (Subpart EE). Standards of Performance for Surface Coating of Metal Furniture;  
nn) 40 C.F.R. 60.330 to 60.336 (Subpart FF). Standards of Performance for Stationary Gas Turbines;  
(o) 40 C.F.R. 60.340 to 60.344 (Subpart HH). Standards of Performance for Lime Manufacturing Plants;  
pq) 40 C.F.R. 60.370 to 60.374 (Subpart KK). Standards of Performance for Lead Battery Manufacturing Plants;  
(qq) 40 C.F.R. 60.380 to 60.386 (Subpart LL). Standards of Performance for Metal Mines Processing Plants;  
r) 40 C.F.R. 60.390 to 60.398 (Subpart MM). Standards of Performance for Automobile and Light-Duty Truck-Surface Coating Operations;  
(ce) 40 C.F.R. 60.400 to 60.404 (Subpart NN). Standards of Performance for Phosphate Rock Plants;  
(ef) 40 C.F.R. 60.420 to 60.424 (Subpart PP). Standards of Performance for Ammonium Sulfate Manufacturing;  
w) 40 C.F.R. 60.430 to 60.436 (Subpart QQ). Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing;  
x) 40 C.F.R. 60.440 to 60.447 (Subpart RR). Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations;  
y) 40 C.F.R. 60.450 to 60.456 (Subpart SS). Standards of Performance for Industrial Surface Coating-Large Appliances;  
z) 40 C.F.R. 60.460 to 60.466 (Subpart TT). Standards of Performance for Metal-Coil Surface Coating;  
(a) 40 C.F.R. 60.470 to 60.474 (Subpart UU). Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacturing;  
(b) 40 C.F.R. 60.480 to 60.490 (Subpart VV). Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;  
c) 40 C.F.R. 60.490 to 60.498 (Subpart WW). Standards of Performance for the Beverage Can Surface Coating Industry;  
(d) 40 C.F.R. 60.500 to 60.506 (Subpart XX). Standards of Performance for Bulk Gasoline Terminals;  
e) 40 C.F.R. 60.510 to 60.514 (Subpart BB). Standards of Performance for the Road-Tire Manufacturing Industry;  
f) 40 C.F.R. 60.560 to 60.566 (Subpart DD). Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Petroleum Manufacturing Industry;  
g) 40 C.F.R. 60.580 to 60.595 (Subpart FF). Standards of Performance for Flexible Vinyl and Urethane Coating and Printing;  
h) 40 C.F.R. 60.630 to 60.633 (Subpart GG). Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries;  
i) 40 C.F.R. 60.630 to 60.634 (Subpart HH). Standards of Performance for Synthetic Fiber Production Facilities;  
j) 40 C.F.R. 60.630 to 60.634 (Subpart II). Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes;  
k) 40 C.F.R. 60.630 to 60.634 (Subpart JJ). Standards of Performance for Petroleum Dry Cleaners;  
l) 40 C.F.R. 60.630 to 60.636 (Subpart KKK). Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants;  
m) 40 C.F.R. 60.630 to 60.634 (Subpart LLL). Standards of Performance for Onshore Natural Gas-Processing-SO2 Emissions;  
o) 40 C.F.R. 60.630 to 60.656 (Subpart PPP). Standards of Performance for Wool Fiberglass-Insulation-Manufacturing Plants;  
p) 40 C.F.R. 60.630 to 60.656 (Subpart QQ). Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;  
(q) 40 C.F.R. 60.630 to 60.676 (Subpart RRR). Standards of Performance for Volatile Organic-Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes;  
r) 40 C.F.R. 60.630 to 60.676 (Subpart SSS). Standards of Performance for Magnetic Tape Coating Facilities;  
s) 40 C.F.R. 60.630 to 60.676 (Subpart TTT). Standards of Performance for Industrial-Surface Coating—Surface Coating of Plastic Parts for Business Machines;  
t) 40 C.F.R. 60.630 to 60.676 (Subpart UUU). Standards of Performance for Calcium and Dryers in Mineral Industries;  
u) 40 C.F.R. 60.630 to 60.676 (Subpart VVV). Standards of Performance for Polymers Coating of Supporting-Substrates Facilities;  
v) 40 C.F.R. 60.630 to 60.676 (Subpart WVV). Standards of Performance for Municipal Solid Waste Landfills;  
w) 40 C.F.R. 60.630 to 60.646 (Subpart AAA). Standards of Performance for Small-Municipal-Waste Combustion Units For Which Construction is Commenced After August 30, 1990 or For Which Modification or Reconstruction is Commenced After June 6, 2001;  
x) 40 C.F.R. 60.650 to 60.690 (Subpart BBB). Emissions Guidelines and Compliance Timetable for Small-Municipal Waste Combustion Units Constructed or Before August 30, 1990;  
y) 40 C.F.R. 60.2000 to 60.2066 (Subpart CCCC). Standards of Performance for Commercial- and Industrial-Solid-Waste Incineration Units—which Construction is Commenced After November 30, 1990 or For Which Modification or Reconstruction is Commenced On or Before June 1, 2001;  
z) 40 C.F.R. 60.2600 to 60.2675 (Subpart DDDD). Emissions Guidelines and Compliance Timetable for Commercial- and Industrial-Solid-Waste-Incineration Units—Units Commenced Construction On or Before November 30, 1990;  
(www) Appendix A to Part 60, Test Methods;  
(www) Appendix B to Part 60, Performance Specifications;  
(www) Appendix C to Part 60, Determination Of Emission Rate Change;  
(www) Appendix D to Part 60, Required Emission Inventory  

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enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA. 

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 60 requirements will continue to work with the state rather than the U.S. EPA for variance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of air pollutants as defined in 40 C.F.R. Part 60 are subject to this regulation. The Division will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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: Regulated entities shall comply with the federal Part 60 NSPS requirements and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) (Regulated entities are already subject to the federal Part 60 NSPS. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division’s current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 60 NSPS source categories

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: According to the delegation provisions under 42 U.S.C. 7411(c), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 60 NSPS for new stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120. 3. Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 7411 requires that the U.S. EPA promulgate New Source Performance Standards for new stationary sources. These NSPS standards and requirements for compliance are codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.506, 60.540
through 60.678, and 60.680 through 60.4420.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.688, 60.680-60.6820, 42 U.S.C. 7411.

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 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 regulation generates no 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 regulation generates no revenues.

   (c) How much will it cost to administer this program for the first year? The Division’s existing operating budget continues as the source of funding for the implementation of this program.

   (d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program 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:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

Department for Environmental Protection Division for Air Quality (Amended After Comments)


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60, 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [requires] the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [establishes] [incorporates by reference] the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through [to] 60.678, Subpart CQO [Subpart-CQO], and establishes alternate compliance standards for the control of particulate emissions from nonmetallic mineral processing plants. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through 60.676, Subpart CQO. For purposes of 40 C.F.R. 60.670 to 60.676 (Subpart CQO), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(3) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 to 60.676 (Subpart CQO).

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 60.670 through [to] 60.676, Subpart CQO (Subpart-CQO). These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 60.670 through [to] 60.676, Subpart CQO (Subpart-CQO), "Standards of Performance for Nonmetallic Mineral Processing Plants"; and

(2) The applicable test methods and requirements contained in Appendix A to Part 60, [incorporated by reference in 401 KAR 60.666], except as provided in Section 3 of this administrative regulation.

Section 3. Alternate Compliance Standards for Particulate Matter. (1) Subsection (2) of this section shall apply in lieu of 40 C.F.R. 60.672, Standard for particulate matter, if:

(a) An affected facility is enclosed in a building that cannot be safely entered; or

(b) Reference Method 9 cannot be applied using guidance specified by the U.S. EPA for an affected facility enclosed inside a building.

(2) The owner or operator of a facility specified in subsection (1) of this section shall comply with the following alternate compliance standards for particulate matter:

(a) For a building vent, the discharge of emissions into the atmosphere shall not exceed the stack emissions limits in 40 C.F.R. 60.672(a);

(b) For a building that does not enclose a crusher, the discharge of fugitive emissions into the atmosphere shall not exceed ten (10) percent opacity; and

(c) For a building that encloses a crusher, the discharge of fugitive emissions shall not exceed fifteen (15) percent opacity.

[Section 4. Incorporation by Reference (1) 40 C.F.R. 60.670 to 60.676 (Subpart CQO), "Standards of Performance for Nonmetallic Mineral Processing Plants," as published July 1, 2003 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Sonokelic Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1450 Woolum Drive, Suite 4, Ashland, Kentucky 41102, (606) 620-5289;

(c) Bowling Green Regional Office, 450 West Avenue, Bowling Green, Kentucky 42104, (270) 747-7475;

(d) Florence Regional Office, 820 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 265-4023;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 436-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 339-2980;

(g) Owensboro-River Valley Office, 3092 Alvey Park Drive, W. Suite 700, Owensboro, Kentucky 42303, (270) 687-7304, and

(h) Paducah Regional Office, 130 Eagle Nest Drive Paducah,
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation adopts the New Source Performance Standards for new nonmetallic mineral processing plants, (Part 60 NSPS), Subpart OOO, codified in the Code of Federal Regulations, 40 C.F.R. Part 60, which contains the NSPS source categories and standards for compliance.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 60 NSPS, Subpart OOO, and to comply with the requirements in KRS CHAPTER 13A.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. Sources that are subject to Subpart OOO of the federal Part 60 NSPS requirements shall comply with this administrative regulation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment revises the text according to KRS CHAPTER 13A requirements. It does not change the intent of the existing regulation.
(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS CHAPTER 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.
(c) How the amendment conforms to the content of the authorizing statute: The Commonwealth is required to implement and enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA.
(d) How the amendment will assist in the effective administration of statutes. Sources subject to the 40 C.F.R. Part 60, Subpart OOO requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of air pollutants as defined in 40 C.F.R. Part 60, Subpart OOO, are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.
(4) Provide an assessment 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: Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.
(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. Regulated entities shall comply with the federal Part 60 NSPS, Subpart OOO requirements and this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Sources subject to the Part 60 NSPS, Subpart OOO, will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.
(b) On a continuing basis. There will not be any additional continuing costs for the implementation of this regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No, as the funding is already available.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish any fees, only the possibility of increased fees.
(9) TIERING: Is tiering applied? No. However, this regulation does contain alternate standards for compliance demonstration of particulate matter standards when either a person cannot safely enter a building or Method 9 cannot be used for opacity testing.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: According to the delegation provisions under 42 U.S.C. 7411(c), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 60 NSPS, Subpart OOO, for stationary sources located within the Commonwealth.
2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate New Source Performance Standards for new stationary sources. These NSPS standards are codified in 40 C.F.R. 60.670 through 60.676, Subpart OOO.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This regulation contains alternate compliance options with the particulate matter standard, codified in 40 C.F.R. 60.672, which have been approved by the U.S. EPA.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The alternative compliance standards will apply when a person cannot safely enter a building or when Method 9 cannot be used.

FINANCIAL 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...
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3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.670-60.576, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including 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 counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division’s existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 63:02. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63.56, 63.70-63.81, 63.100-63.111E [63.100-63.942], 63.944(E)(4), NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(0).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [require the Environmental and Public Protection Cabinet to prepare administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation adopts [establishes] [incorporates, by reference] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through [to] 63.81, and 63.100 through 63.111E [63.100-63.942]. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(0).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.111E, Subparts A, B, D, and F through GGGGGG. [For purposes of 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.942 (Subparts A, B, D, and F through GGGGGG), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 63, "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.942 (Subparts A, B, D, and F through GGGGGG). These sources shall comply with the following:

(a) the applicable provisions in 40 C.F.R. 63.1 through 63.16, Subpart A [to 63.18, Subpart B], "General Provisions";

(b) For sources for which a maximum achievable control technology (MACT) determination has not been made, the applicable methods and procedures in 40 C.F.R. 63.40 through [to] 63.56, Subpart B [Subpart B], "Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)");

(c) For sources that applied for early reducton credit and wish to complete the demonstration, the applicable provisions in 40 C.F.R. 63.70 through [to] 63.81, Subpart D [Subpart D], "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants";

(d) The applicable test methods, standards, and other provisions contained in 40 C.F.R. Part 63, Appendices A through E; and

(e) The applicable Part 63 NESHAP.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:


(b) 40 C.F.R. 63.40 through 63.56 (Subpart B), "Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)");

(c) 40 C.F.R. 63.70 through 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants";

(d) 40 C.F.R. 63.100 through 63.107 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry";

(e) 40 C.F.R. 63.110 through 63.153 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater";
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NESHAP and to comply with the requirements in KRS CHAPTER 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 63 NESHAP requirements shall comply with this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the text according to KRS CHAPTER 13A requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS CHAPTER 13A,2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 63 NESHAP requirements and standards. In order to retain these authorities, the U.S. EPA would implement and enforce federal requirements. The amendment will allow the Division to continue enforcing the standards and requirements.

(d) How the amendment will assist in the effective administration of the statutes: Sources subject to the 40 C.F.R. Part 63 requirements will continue to work with the state rather than the U.S. EPA for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of hazardous air pollutants as defined in 40 C.F.R. Part 63 are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for those sources.

(4) Provide an assessment 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: Sources subject to the Part 63 NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation. The estimates of the administrative regulations shall comply with the federal Part 63 NESHAP requirements and 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): Regulated entities are already subject to the federal Part 63 NESHAP. There are no additional costs involved in compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 63 NESHAP will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division’s current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this regulation.
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(6) State whether or not the administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 63 NESHAP source categories.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7412(l), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 63 NESHAP for stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate National Emission Standards for Hazardous Air Pollutants. These NESHAP standards and requirements for compliance are codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.11168.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, that those required by the federal mandate? No. This regulation is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63.56, 63.70-63.81, 63.100-63.11168, 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

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 regulation generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program 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 Public Health
Division of Public Health Protection and Safety
(Amended After Comments)


RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194A.050 [194A.050], 211.090

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services [Human-Resource]s is authorized by KRS 211.870, 211.890 and 211.993 to regulate an operator [operators] of a source [sources] of radiation other than a licensed practitioner [practitioners] of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to define terms that are applicable to administrative regulations adopted by the cabinet relating to operators of sources of radiation.

Section 1. Definitions. (1) "Alternate course of study" means an independent nuclear medicine course of study that qualifies an individual to take an examination approved by the cabinet.

(2) "Authorized user" means a physician, dentist, or podiatrist identified on a radioactive materials license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or other agreement state that authorizes the medical use of radioactive materials.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certification" means the process by which a certificate of license is issued by the cabinet pursuant to this section and in accordance with KRS 335B.010.

(5) "Certified radiation operator" means an individual who shall be licensed pursuant to the provisions of this administrative regulation to perform the duties of a radiographer, nuclear medicine technologist, or radiation therapist.

(6) "Clinical education" means the component of the educational program that shall provide an environment for supervised competency-based clinical education and shall offer a sufficient and well-balanced variety of procedures using modern, accurately calibrated equipment.

(7) "Continuing education" means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skills underpin professional performance that a certified radiation operator uses to provide services for patients, the public, or the medical profession. In order to qualify as continuing education an approval request form or proof of approval by a Recognized Continuing Education Evaluation Mechanism (RCEEM) shall be submitted to the Cabinet for Health and Family Services along with (see form Kentucky CEU-001, Continuing Education Approval Request Radiation Operator Certification Program).

(8) "Contrast procedure" means a diagnostic or therapeutic radiation procedure performed while administering radiopaque media into the human body to visualize anatomy not otherwise demonstrated on an image receptor.

(9) "Course of study" means a basic curriculum in radiologic technology, nuclear medicine technology, or radiation therapy approved by the cabinet.

(10) "Diagnostic education" means the component of the educational program that shall provide formal instruction which has specific objectives and suitable methods for assessing the student's cognitive progress for entry-level competency.

(11) "General certificate" means a license issued by the cabinet authorizing an individual to perform diagnostic radiographic, nuclear medicine, or radiation therapy procedures.

(12) "General radiation operator" means an individual who has completed an accredited educational program and is prepared to
administer ionizing radiation, accurately position patients, select equipment settings, assess the patient, and evaluate imaging or therapeutic outcomes following established professional standards of care within the relevant scope of practice.

(b) Only an individual certified as a general radiation operator shall be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed.

(c) Categories for a general radiation operator shall include:

1. Radiographer who shall be authorized to:
   a. Perform a comprehensive scope of diagnostic-radiologic procedures using external ionizing radiation equipment.
   b. Exercise responsibility for the operation of radiation-generating equipment shielding the patient and staff from unnecessary radiation and the appropriate exposure of radiographs or other procedures which contribute to the site of dosage of ionizing radiation to which a patient is exposed.
   c. Provide patient care resulting in radiographic or digital images.
   d. Nuclear medicine technologist who compiles, calibrates, dispenses, and administers radiopharmaceuticals, pharmaceuticals, and radioutrides under the direction of an authorized user for benefits of performing a comprehensive scope of nuclear medicine procedures for diagnostic and therapeutic purposes.
   e. Radiologist assistant is an individual certified by the American Registry of Radiologic Technologists (ARRT) as a Registered Radiologic Assistant (R.R.A) who works under the supervision of a radiologist in accordance with supervision guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT to enhance patient care by assisting the radiologist in the radiologic imaging environment.

(i) "Licensed practitioner" or "licensed practitioner of the healing arts" means a physician licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry, or veterinary medicine.

(ii) "Limited certificate" means a license issued by the cabinet authorizing an individual to perform limited radiographic procedures in his specific field of practice or operation.

(d) "Limited x-ray machine operator" means an individual who:

(a) Shall have completed an educational program approved by the cabinet and is prepared to:
   1. Administer ionizing radiation.
   2. Accurately position patients.
   3. Select equipment settings.
   4. Assess the patient.
   5. Evaluate imaging data.
   6. Follow established standards of care resulting in diagnostic radiographic images limited to select body anatomical sites.

(b) Shall not be employed as an operator of sources of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed and

(c) Is certified by the cabinet and restricted to the following categories of practice:

1. Limited x-ray machine operator who shall be authorized to perform limited radiographic procedures, create images using ionizing radiation, and provide patient care.
2. Limited podiatry x-ray machine operator who shall be authorized to perform radiographic procedures of the feet and ankles only.
3. Limited bone densitometry x-ray machine operator who shall be authorized to perform bone densitometry radiographic procedures only.

(i) "Limited radiographic procedures" means procedures that shall be performed by a limited x-ray machine operator.
   a. These procedures shall include:
      1. Routine chest and thorax.
      2. Cystern.
      3. Extremity.
      4. Podiatric.
      5. Vertebral column radiography.

(b) The following procedures shall be excluded:

1. Contrast media.
2. Fluoroscopic equipment.
5. Bedside radiography.
6. Nuclear medicine, and
7. Radiation therapy procedures.

(iii) "National organization" means a professional society or professional organization approved by the cabinet that examines, register, certifies, or approves individuals or accredits educational programs relating to the use of sources of radiation.

(iv) "Nuclear medicine technology" means technology applied under the supervision of an authorized user in compliance with 902 KAR 145 which shall pertain to the:

(a) Utilization of radiopharmaceuticals or radioactive materials in the diagnosis and treatment of disease in humans.

(b) Preparation of radiopharmaceutical agents.

(c) The administration of a diagnostic or therapeutic radiopharmaceuticals to patients or human research subjects.

(d) Calibration and operation of radiation detecting equipment to obtain clinical information.

(e) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who shall be certified by the cabinet to:

(a) Technically manipulate or administer a source of radiation.

(b) Accurately position the patient to receive the radiation or manipulate the patient within the imaging or active radiation field.

(v) "Professional educational guidelines" means curriculum and educational standards established by national organizations and approved by the cabinet.

(vi) "Program director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation shall be properly conducted.

(vii) "Program educational certificate" means a certificate issued by the cabinet to an individual participating in the alternate nuclear medicine course of study approved by the cabinet.

(viii) "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts who has the knowledge and responsibility to apply appropriate radiation protection practices.

(ix) "Radiation therapy" means the therapeutic administration of ionizing radiation to destroy lesions while sparing normal surrounding tissue.

(x) "Radioactive materials" means a solid, liquid, or gas that emits ionizing radiation spontaneously.

(xi) "Radioisotope" means a radioactive element or a radioactive isotope.

(xii) "Radiopharmaceuticals" means radioactive drugs used for the diagnosis and treatment of disease.

(xiii) "Radiography" means the utilization and administration of external ionizing radiation to produce medically relevant images for the diagnosis of injury or disease and shall include a comprehensive scope of diagnostic and therapeutic procedures.

(xiv) "Scope of practice" means the standards established by professional organizations that delineate what the profession does and places limits upon or confines the breadth of functions persons within a profession may lawfully perform.

(xv) "Source of radiation" means a radioactive material, device, or equipment emitting or capable of producing ionizing radiation.

(xvi) "Sponsoring institution" means an institution approved by the cabinet to provide a post-secondary educational program in the radiologic sciences.

(xvii) "Student" means an individual enrolled in an approved course of study for operators of sources of radiation.

(xviii) "Supervision of students" means supervised by a licensed practitioner of the healing arts or a certified radiation operator who
direct the activity of students.

(a) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified radiation operator.

(b) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or certified radiation operator who is immediately available in the individual's place of employment or sponsoring institution.

(c) "Temporary certificate" means a written authorization issued by the cabinet permitting an individual who has completed an approved course of study to perform diagnostic or therapeutic radiography procedures while awaiting the results of his examination.

Section 2. Incorporation by Reference (1) Form "KY CEU-001, Continuing Education Approval Request Radiation Operator Certification Program," edition 3/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department for Public Health, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [As used in the cabinet's administrative regulations relating to the certification of operators of sources of radiation, the following terms shall have the meanings set forth below unless otherwise indicated otherwise.]

(1) "Certified" means the holding of a valid certificate as defined in these regulations.

(2) "Contrast study" means a study performed whereby contrast media is introduced into the human body to define a part(s) which is not normally visualized on a radiograph.

(3) "Cabinet" means the Cabinet for Health and Family Resources.

(4) "Emergency condition" means a condition that exists whereby an employer has unsuccessfully made a bona fide attempt to employ a certified radiation operator and the cabinet is requested to issue a provisional certificate so as to not impair necessary radiation health services to the particular facility.

(5) "General certificate" means a written authorization issued by the cabinet authorizing an individual to perform diagnostic radiographic procedures.

(6) "Individual" means a human being.

(7) "Licensed practitioner" or "licensed practitioner of the healing arts" means an individual licensed to practice medicine, osteopathy, dentistry, chiropractic, podiatry or veterinary medicine in this state.

(8) "Limited certificate" means a written authorization issued by the cabinet authorizing an individual to perform radiographic procedures other than those involving contrast media, in a specific field of practice or operation.

(9) "National organization" means a professional association approved by the cabinet, that examines, registers, certifies or approves individuals or education programs relating to operators of sources of radiation.

(10) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who use or operates a source(s) of radiation.

(11) "Provisional certificate" means a written authorization issued by the cabinet temporarily allowing an individual to perform radiographic procedures under the direct supervision of a licensed practitioner of the healing arts, if a certified operator is not available.

(12) "Qualified person" means an individual who, through education and training, is qualified to teach radiation operators in one or more aspects of radiologic technology.

(13) "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts who has the knowledge and responsibility to apply appropriate radiation practices.

(14) "Radiography" means the use of radiation-producing equipment on human beings for diagnostic radiographic purposes under the supervision of a licensed practitioner of the healing arts or a certified operator.

(15) "Sources of radiation" means devices or equipment emitting or capable of producing ionizing radiation, if associated high voltage is applied, for the purpose of performing human diagnostic radiographic examinations.

(16) "Sponsoring institution" means a hospital, educational or other facility or a division thereof, offering or intending to offer a course of study for operators of sources of radiation.

(17) "Student" means an individual enrolled in a course of study for operators of sources of radiation.

(18) "Supervision" means an individual supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified operator.

(a) "Direct personal supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified operator.

(b) "Direct supervision" means supervised by a licensed practitioner of the healing arts or certified operator who is immediately available in the individual's place of employment or sponsoring institution.

(c) "General supervision" means supervised by a licensed practitioner of the healing arts or a certified operator who is available but not necessarily within the individual's place of employment or sponsoring institution.

(19) "Program director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation is properly carried out.

(20) "Temporary certificate" means a written authorization issued by the cabinet authorizing an individual, who has completed an approved course of study, to perform radiographic procedures while awaiting examination.

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 15, 2007
FILED WITH LRC: August 13, 2007 at 10 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: Dawey F. Crawford
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines essential terms used in the regulations in this chapter regarding the medical imaging profession, those individuals other than practitioners who operate sources of radiation in the healing arts.
(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts. The purpose of this administrative regulation is to define terms that are used in the administrative regulations promulgated by the cabinet covering operators of sources of radiation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of these administrative regulations relating to operators of sources of radiation is KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts. This administrative regulation provides the definitions for Chapter 105 regulations that are covered under this authority.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation updates the definitions used in the administrative regulations covering persons other than practitioners who operate sources of radiation in the healing arts. This amendment will improve the effectiveness of the regulations in this chapter by modernizing the terminology and ensuring consistency with national standards of practice and federal regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment revises 902 KAR 105.010 by amending terms used in other regulations in this chapter and establishing new definitions, including those for the regulation of nuclear medicine technologists and radiation therapy technologists.
(b) The necessity of the amendment to this administrative...
regulation: This series of regulations has not been revised in over ten years. There have been many changes in the radiation produc-
ing technology industry during that time, and this regulation mod-
ernizes the definitions used throughout the chapter.
(d) How the amendment will assist in the effective administra-
tion of the statutes: By updating this regulation, the cabinet will
establish definitions consistent with current practice, thereby mak-
ing enforcement more effective. This amendment will also assist in
the administration of the statutes by ensuring that regulated entities
are knowledgeable about the definitions used in the regulations
with which they must comply.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: Approximately 300 state healthcare organizations
with approximately 400 individuals currently performing Nuclear
Medicine procedures or radiation therapy treatments in Kentucky
are affected.
(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: Regulated entities must be familiar with
new definitions in order to comply with all regulations in the chap-
ter.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): Because this regulation only defines terms used in the
regulations for this chapter, there is no cost to comply with the
amendment.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The regulated entities will have
information necessary to be in compliance with regulations govern-
ing the radiation producing industry. Additionally, they will have the
benefit of working in an industry regulated to ensure highest de-
grees of safety to them and to the patients they serve.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: Because this administrative regulation only defines
terms used in other regulations for this chapter, no additional cost
will be incurred initially as a result of amending this administrative
regulation.
(b) On a continuing basis: Because this administrative regula-
tion only defines terms used in other regulations for this chapter,
no additional costs will be incurred on a continuing basis to imple-
ment this regulation.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: There
are no costs associated with the implementation and enforcement
of this regulation. Therefore, no funding is necessary.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: This adminis-
trative regulation will not require an increase in fees in order to
implement it.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees, directly or
indirectly.
(9) TIERING: Is tiering applied? Tiering was not appropriate in
this administrative regulation because the administrative regulation
applies equally to all those individuals or entities regulated by it.

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? Unit, parts, or divi-
sions of state and local government where radiation producing
equipment is used in the healing arts, such as county or city owned
hospitals or clinics will be affected.
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation. KRS 211.870, 211.890 and 211.993
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 adminis-
trative regulation will not generate any additional revenue in the
first year.
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? This
administrative regulation will not generate any additional revenue
in subsequent years.
(c) How much will it cost to administer this program for the first
year? This specific regulation, which addresses definitions for the
medical imaging profession series, will not result in additional costs
for the first year.
(d) How much will it cost to administer this program for subse-
quently years? This specific regulation, which addresses definitions
for the medical imaging profession series, will not result in addi-
tional 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 (+/-): n/a
- Expenditures (+/-): n/a
- Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)


RELATED TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194A.050, 211.090(b)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet
for Health and Family Services is authorized by KRS 211.870,
211.890 and 211.993 to regulate an operator of a source of radia-
tion other than a licensed practitioner of the healing arts, including
but not limited to: the classification and certification of operators;
examination, standards of training and experience; curricula stan-
dards for institutions teaching persons to operate sources of radi-
ation; issuance, renewal, and revocation of certificates; the fixing of
a reasonable schedule of fees and charges to be paid by appli-
cants for examinations, certificates, and renewal certificates; and to
set other standards as may be appropriate for the protection of
health and safety. The purpose of this administrative regulation is
to establish uniform requirements for the certification of limited
certificates holders.

Section 1. Applicability. (1) This administrative regulation shall
apply to individuals who perform limited human diagnostic radiogra-
phy while under the supervision of a medical, osteopathic, or
chiropractic licensed practitioner, or a certified radiation operator,
and who successfully complete the requirements for the limited x-
ray machine operator certification.
(2) Limited human diagnostic radiography shall include routine
chest and thorax, cranium, extremity, podiatric, vertebral column
radiography, and bone densitometry procedures.
(3) Limited human diagnostic radiography shall exclude those
involving contrast media, fluoroscopic equipment, mammography,
computed tomography, bedside radiography, nuclear medicine, or
radiation therapy procedures.

Section 2. Eligibility for a Limited X-ray Machine Operator Certificate. (1) No person shall be eligible for a limited x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(a) Completed a four (4) year course of study In a secondary school or passed a standard equivalency test; and [w]

(b) Completed a course of study in limited x-ray machine operations approved by the cabinet from a postsecondary institution or an approved independent study course.

(2) The approved postsecondary course of study shall include a minimum of 240 hours of classroom work including the following subjects:

(a) Human structure and function;
(b) Medical terminology;
(c) Radiation safety and protection;
(d) Radiation biology;
(e) Medical ethics and law;
(f) Equipment operation and maintenance;
(g) Image production and evaluation;
(h) Radiographic processing technique;
(i) Radiographic procedures;
(j) Patient positioning; and
(k) Patient care.

(3) The approved postsecondary course of study shall include a minimum of 360 hours to be devoted to clinical experience consisting of demonstrations, discussions, and supervised practice.

(4) An approved independent study course shall include the following subjects:

(a) Human structure and function;
(b) Medical terminology;
(c) Radiation safety and protection;
(d) Radiation biology;
(e) Medical ethics and law;
(f) Equipment operation and maintenance;
(g) Image production and evaluation;
(h) Radiographic processing technique;
(i) Radiographic procedures;
(j) Patient positioning; and
(k) Patient care.

(5) An approved independent study course shall include a minimum of fifty (50) radiographic procedures in each of the following areas:

(a) Chest;
(b) Extremities; and
(c) Musculoskeletal.

(6) The clinical experience shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the provided textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment.

Section 3. Eligibility for a Limited Podiatry X-ray Machine Operator Certificate. No person shall be eligible for a limited podiatry x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(1) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and [w]

(2) Completed an independent course of study in limited podiatric radiography approved by the cabinet.

(a) The approved independent study course shall include the following subjects:

(1) Human structure and function;
(2) Medical terminology;
(3) Radiation safety and protection;
(4) Radiation biology;
(5) Medical ethics and law;
(6) Equipment operation and maintenance;
(7) Image production and evaluation;
(8) Radiographic processing technique;
(9) Radiographic procedures;
(10) Patient positioning; and
(11) Patient care.

(b) An approved independent study course in limited podiatric radiography shall include a minimum of fifty (50) radiographic procedures of the feet and ankles.

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment.

(3) Passed an examination conducted or approved by the cabinet.

Section 4. Eligibility for a Limited Bone Densitometry X-ray Machine Operator Certificate. No person shall be eligible for a limited bone densitometry x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(1) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and

(2) Completed an independent limited course of study in limited bone densitometry approved by the cabinet.

(a) The approved independent study course shall include, but not be limited to, the following subjects:

1. Human structure and function;
2. Medical terminology;
3. Radiation safety and protection;
4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and

(b) The approved independent study course shall include a minimum of fifty (50) bone densitometry procedures.

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment. The bone densitometry student shall also receive manufacturer's training.

(d) Manufacturer's training will be conducted by a representative of the company who produces the x-ray machine used for bone densitometry.

(e) Training shall include the proper techniques for operation and safety.

(3) Passed an examination conducted or approved by the cabinet.

Section 5. Temporary Certificate. (1) The cabinet may, upon application and payment of the appropriate fees, issue a temporary certificate to an applicant who has completed an approved course of instruction in limited medical radiography, limited podiatric radiography, and limited bone densitometry, and who meets the requirements of this administrative regulation, but has not taken the required examination.

(2) Applications for certification shall be filed with the Cabinet for Health and Family Services on Form KR-300, Radiation Operator Certification Diagnostic X-Ray Application Form.

(3) Temporary certificates for all certifications shall expire on the last day of the month, one (1) year after the date of issuance.
and shall not be renewable.

Section 6. Approved Radiographic Procedures for the Limited X-ray Machine Operator. Limited x-ray machine operators are limited to performing the following procedures:
(1) Limited x-ray machine operator certification:
   (a) Radiography of the thorax, lungs and ribs;
   (b) Radiography of the skull and facial structures;
   (c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and
   (d) Radiography of the cervical, thoracic, and lumbar spines.
(2) Limited podiatry x-ray machine operator certification, including radiography of the foot and ankle.
(3) Limited bone densitometry x-ray machine operator certification, including bone densitometry radiographic procedures.

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

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 15, 2007
FILED WITH LRC: August 15, 2007 at 10 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: Dewey F. Crawford
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes uniform requirements for the certification of individuals operating sources of radiation in the healing arts holding a limited certificate.
   (b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, but not limited to: the classification and certification of operators; and the other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish practice standards relating to X-ray operators in a limited capacity.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating operators of sources is KRS 194A.050, 211.090, KRS 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It has been over ten years since the regulations in this chapter have been updated. Many advancements have taken place during that time in the radiation producing industry. This new regulation recognizes the need for standards for certification of x-ray operators operating in a limited capacity. This need has arisen due to the development of the industry and will allow the cabinet to ensure the highest quality image and treatment resulting from controlled, intentional exposure of radiation. This administrative regulation also brings the cabinet regulations into compliance with national 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: This is a new regulation designed to create standards for a new classification of a limited x-ray machine operator.
   (b) The necessity of the amendment to this administrative regulation: This is a new regulation.
   (c) How the amendment conforms to the content of the authorizing statutes: See the statutory authority for the promulgation of an administrative regulation relating operators of sources is KRS 194A.050, 211.090, KRS 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.
   (d) How the amendment will assist in the effective administration of the statutes: The statutory authority for the promulgation of an administrative regulation relating operators of sources is KRS 194A.050, 211.090, KRS 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities affected by this regulation are approximately 260 health care organizations with approximately 400 individuals.
   (4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must be familiar with new requirements in order to be licensed to operate x-ray equipment in a limited capacity.
   (5) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cost of becoming familiar with this regulation should be negligible. The specific cost associated with this new regulation will be time spent reading the requirements. Most operators have already received the training outlined in this regulation.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The regulated entities will have all the information they need to be in compliance with the limited x-ray operator regulation governing the radiation producing industry. Additionally they will have the benefit of working in an industry regulated to ensure highest degrees of safety to them and to the patients they serve.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: No additional cost will be required to implement this regulation.
      (b) On a continuing basis: No additional cost will be incurred on a continuing basis to implement this regulation.
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There are no costs associated with the implementation and enforcement of this regulation. No funding is necessary.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees in order to implement it.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, directly or indirectly.
   (9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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? Any parts having to do with healing arts where radiation producing equipment is used,
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.870, 211.890 and 211.993.

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 regulation will not generate revenue for the state or local government.

   (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 regulation will not generate revenue for the state or local government in subsequent years.

   (c) How much will it cost to administer this program for the first year? No additional costs

   (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:
PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.110(1)(d), 18A.202
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202, EO 98-1443
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. EO 98-1443 requires the secretary to establish a state employee adoption benefit program. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(a) The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall develop procedures to ensure proper evaluation of each suggestion, review and act upon, by approval or denial, a suggestion presented to the chairperson by the employee and, review denials as set forth in subsection (4) of this section.

2. A designated coordinator shall have the right to present recommended suggestions to the council and to vote on them.

3. The council may defer action for up to one (1) year and one (1) nonpending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet at a minimum on a quarterly basis or upon the request of the council chairperson or a majority of the coordinators.

(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions. A suggestion shall:

1. Be made by an employee to the employee's cabinet or agency; or
2. Be forwarded from other coordinators if the suggestion affects the coordinator's agency.

(c) The coordinator shall present suggestions recommended for approval by his cabinet or agency to the council for consideration.

(2) Eligibility. (a) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment or procedures;
2. Reduces time or cost of a work operation;
3. Creates a safer work environment;
4. Increases revenue; or
5. Improves relationships with or services for the public.

(b) The suggestion shall:

1. Present an improvement in state service or function;
2. Explain how the change would be accomplished;
3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations; and
4. Be submitted on the Employee Suggestion Form P-35 and be accompanied by exhibits or illustrations as needed.

a. Suggestions shall be practicable, useful, and constructive.

b. A suggestion that requires legislative or regulatory changes for implementation may be submitted. It shall be the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or administrative regulation changes, the suggestion shall be considered for an award.

(c) A suggestion which has been implemented and which will result in cost savings or improvement in government operations shall be eligible for an award if it is submitted on a Employee Suggestion Form P-35 within ninety (90) [thirty (30)] working days of implementation of the suggestion by an agency.

(d) The following suggestions shall not be eligible for a cash award:
1. A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. *Scope of duties* shall include a specific set of tasks as set forth in the position description of the suggester at the time the suggestion is submitted;
2. A suggestion related to a particular problem given to an employee to solve within the scope of his duties and responsibilities;
3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;
4. A suggestion which include a proposal to perform routine maintenance operations or follow manufacturer's recommendations;
5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or
6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(e) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, with an award being divided equally between or among the suggesters.

(f) The first suggestion received shall take precedence over all future suggestions having the same purpose. If two (2) or more suggestions deemed similar are received on the same day, an award granted shall be divided equally between or among the suggesters.

(g) Any suggestion shall be considered confidential communications among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) General provisions.

(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. The system shall, at a minimum, include the following:

1. A method to notify the suggester, in writing, that the suggestion has been received, and to notify the suggester, in writing, of a change in the status of the suggestion;
2. A method to document the original suggestion, evaluation, and action taken; and
3. A method to prepare and present documentation of a suggestion for recommendation to the council.

(b) Eligibility of a suggestion shall be evaluated according to the circumstances existing at the time the suggestion was made. An evaluation shall be completed by a person with expertise in the area under consideration. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion Form P-36, and the form shall be dated and signed by the individual making the evaluation.

(c) The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.

1. A suggestion shall be considered to be active and eligible for an award until the suggester is notified, in writing, that the suggestion has been approved or denied.
2. If it is determined that a suggestion will not be implemented, the coordinator shall notify the suggester, in writing, stating the reason it was not implemented.

3. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester
may request reevaluation by the cabinet or agency. The request shall:

a. Be in writing;
b. Be evaluated by the next level of supervision;
c. Be received by the agency within one (1) year from the date of rejection; and
d. Include information regarding the change in conditions

(d) If a suggestion is approved and implemented by the [a]
cabinet or agency, the suggestee's coordinator shall recommend approval of the suggestion to the council.

1. The recommendation shall contain:

a. The suggestion as completed by the suggestee on the Em-
ployee Suggestion Form P-35;
b. The evaluation forms completed according to the criteria set
forth in this administrative regulation, and
c. A statement of actual or projected cost savings using gener-
ally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson of the
council shall send written notification of the council's action to the
suggestee's coordinator and the coordinator shall then provide
written notification to the suggestee regarding the decision.

3. If an eligible suggestion is denied by the council, the sugges-
tee shall remain on active file with the council for a period of
one (1) year from the date of denial.

(a) Award of cash payment shall be in accordance with KRS
18A 202.

1. The cash payment shall be calculated based upon the
amount saved over the period of one (1) year minus implementa-
tion costs and shall be determined according to generally accepted
accounting principles.

2. The award check shall be issued by the agency where the
suggestee is employed. Funds for payment shall come from the
agency or agencies implementing the suggestion. The agency
issuing the check may interaccount other agencies implementing
the suggestion for a proportionate share of the total award amount.

3. If a suggestion may result in financial savings to the state
and proper documentation of cost savings has not yet been ob-
tained, the council shall require that each agency implementing
the suggestion maintain records which document the cost savings
for a period not to exceed one (1) year from the date of implementa-
tion. Documentation shall be carried out according to generally
accepted accounting principles. This cost savings analysis shall be
forwarded by the coordinator to the council chairperson within thirty
(30) work days of its completion.

4. If a suggestion has been approved by the council and has
resulted in financial savings to the state, the suggestee shall be
compensated in an amount of ten (10) percent of the amount
saved over one (1) calendar year, with a minimum of $100 and a
maximum of $2,500. If a suggestion approved by the council
results in an intangible improvement in state service, the suggestee
shall be compensated in the amount of $100. Upon the suggestee's
receipt of the compensation, the suggestion shall become the property
of the state.

(4) Reconsideration.

(a) A suggestee may request reconsideration of a suggestion
that has not received approval from the cabinet or agency within
ten (10) work days of the date that written notice of denial is re-
ceived by the suggestee.

(b) The suggestee shall request reconsideration, in writing, and
shall set forth the basis for the request. The request shall be filed
with the coordinator within ten (10) days of the date of the denial.
If the tenth day falls on a day that the cabinet or agency office is
closed during regular work hours, the request may be filed on the
next work day.

(c) Within thirty (30) work days after the cabinet or agency shall act
on the request for reconsideration and notify the suggestee, in writ-
ing, of the reason for the decision.

(5) Council review.

(a) A suggestion may be reviewed by the council on its own
motion, or upon request of the suggestee. If a suggestion has been
reconsidered and denied by the cabinet or agency, the suggestee
may request a review by the council. The suggestee shall request
review within thirty (30) days of receipt of the written notification
of the outcome of the reconsideration and shall set forth, in writing,
this hearing shall notify this agency in writing by September 18, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Drive, Suite 516, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Thomas B. Stephens

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for an employee suggestion system.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with the statutory mandate in KRS 18A.110, which requires the Personnel Cabinet to promulgate administrative regulations to implement work-related incentive programs for state employees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the statute authorizing the Secretary of the Personnel Cabinet to establish work-related incentive programs for state employees.
(d) How this administrative regulation presently assists or will assist in the effective administration of the statute: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendments increase the period of time an employee has to submit a suggestion once implemented from thirty (30) days to ninety (90) days, and corrects typographical errors.
(b) The necessity of the amendment to the existing administrative regulation: This amendment is necessary to give employees sufficient time to submit their suggestions for an award and correct typographical errors.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the implementation of work-related incentive programs, such as the employee suggestion system.
(d) How the amendment will assist in the effective administration of the statute: The amendment gives state employees sufficient time to submit their suggestions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employees with status in the classified service of the executive branch may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state. Specifically, this encompasses 30,000 eligible state employees.

(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 additional action is required by entities to comply with the incorporation of these provisions as administrative regulations.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will not have a cost impact to participants.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants will have additional times to submit their suggestions. A suggestion which has been implemented and which will result in cost savings or improvement in government operations shall be eligible for an award if it is submitted on an Employee Suggestion Form P-35 within ninety (90) working days of implementation of the suggestion by an agency.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation.
(a) Initially: There are no costs associated with implementing this amendment to the administrative regulation.
(b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As there is no implementation of the administrative amendment, no funding is required.

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

(9) TIERING: Is wording applied? No, all merit, classified employees will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement 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 amendment will affect all employees with status in the classified service of the executive branch, which may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state. Specifically, this encompasses approximately 30,000 eligible state employees.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 18A.110(1)(d).

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 fiscal 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 fiscal year? The administrative regulation amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the fiscal year? The administrative regulation amendment will not generate any revenue.

(c) How much will it cost to administer this program for the fiscal year? Costs of implementing this administrative regulation amendment are believed to be zero.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

GENERAL GOVERNMENT
Governor's Office for Local Development
(Amendment)


RELATES TO: KRS 46.010, 46.020, 65.944, 66.045, 68.020,
68.210, 68.245, 68.250, 68.350, 132.585

STATUTORY AUTHORITY: KRS 46.010, 65.944, 66.045, 68.210

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 46.010, 65.944, 66.045 and 68.210 and mandates uniform minimum requirements relating to budgeting, reporting and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds.


(2) This material may be inspected, copied, or obtained subject to applicable copyright law at the Governor's Office for Local Development, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COLLEEN CHANEY, Acting Commissioner
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 9 a.m.

PUBLIC HEARING PUBLIC COMMENTS PERIOD: A public hearing on this administrative regulation shall be held September 26, 2007, at 2 p.m. at the Governor's Office for Local Development, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2007, five workdays prior to the hearing. The hearing may be cancelled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Andrew S. Hartley, Staff Attorney, Governor's Office for Local Development, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone (502) 573-2382, Fax (502) 573-2339.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Andrew S. Hartley

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation provides the framework for county financial practices and county financial reporting.

(b) The necessity of this administrative regulation: This administrative regulation standardizes the requirements for county financial practices.

(c) How does this administrative regulation conform to the content of the authorizing statutes: The authorizing statutes allow for discretion on the part of the State Local Finance Officer. This regulation standardizes the State Local Finance Officer's determinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the framework for the county financial reporting that is required by statute.

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

(a) How the amendment will change this existing administrative regulation: The material incorporated by reference updates the existing regulation which concerns budgetary and reporting requirements.

(b) The necessity of the amendment to the existing administrative regulation: This amendment is necessary due to changes in reporting requirements and other areas during the past year.

(c) How the amendment conforms to the content of the authorizing statutes: The material incorporated by reference updates the

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All counties.

(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 additional actions are required. The manual provides guidance to the counties as to their already existing duties and responsibilities.

(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 associated with the changes to the Manual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The counties will presumably save costs as a result of the improved Manual.

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

(a) Initially: Cost of printing materials. (TBD)

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing budget of the Governor's Office for Local Development.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate because this administrative regulation clarifies and establishes only the minimum requirements for county governments.

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) 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): None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts): None

(c) How much will it cost to administer this program for the first year: Zero

(d) How much will it cost to administer this program for subsequent years: Zero

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

Revenues (+/-): 

Expenditures (+/-): 

- 617 -
general government cabinet
Kentucky Board Of Ophthalmic Dispensers
(Amendment)

201 KAR 13:080. Operation and Inspection of optical establishments.

RELATES TO: KRS 326.010(2), 326.010(3), 326.030, 326.070, 326.090(1)(c), 326.090

STATUTORY AUTHORITY: KRS 326.020(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.030 provides that a person shall not engage in the practice of ophthalmic dispensing unless he is licensed. KRS 326.090(2) authorizes the board to impose a fine against any person who operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser. KRS 326.030(3)(a)((4)) authorizes the board to suspend or revoke a license to practice ophthalmic dispensing for a violation of KRS Chapter 326. KRS 326.090 provides that the practice of ophthalmic dispensing without a license shall be a misdemeanor.) KRS 326.020(3)(a) authorizes the board to promulgate administrative regulations necessary to implement the chapter. This administrative regulation establishes a procedure for the operation and inspection of an optical establishment to determine if the establishment has complied with the licensing requirements.

Section 1. Definitions. (1) "Operates an optical establishment" means to engage in business activities at an optical establishment, including the activities of the owner of the optical establishment and the authorized representative of the owner in the management of the optical establishment and its employees.

(2) "Optical establishment" is defined in KRS 326.010(3).

(3) "Person" is defined in KRS 446.010(67).

(4) "Supervision" means the oversight of the practice of ophthalmic dispensing at an optical establishment by a Kentucky-licensed ophthalmic dispenser who is physically present on the premises. (The provisions of this administrative regulation shall apply exclusively to a person practicing ophthalmic dispensing as defined by KRS 326.010(2).)

Section 2. Optical Establishment Supervisor. (1) Each optical establishment shall have a Kentucky-licensed ophthalmic dispenser to provide supervision for the establishment.

(a) A person who is employed as an optical establishment shall notify the board within five (5) working days of his departure from that optical establishment.

Section 3. (1) A board member, employee of the board, or an authorized agent may enter an optical establishment which is required to be under the supervision of a Kentucky-licensed ophthalmic dispenser [where a licensed optical dispensing is an optical establishment which is in compliance with the statutes and administrative regulations applying to the practice of ophthalmic dispensing;]

(a) Whether the optical establishment is under the supervision of a Kentucky-licensed ophthalmic dispenser;

(b) Whether every person performing ophthalmic dispensing at the optical establishment is in compliance with the statutes and administrative regulations applying to the practice of ophthalmic dispensing;

(c) The name of each person who operates the optical establishment.

(2) The provisions of this administrative regulation shall not apply to a person who is exempted under KRS 326.070.

Section 4(3) A licensed ophthalmic dispenser or apprentice ophthalmic dispenser shall provide the appropriate license or identification for each person employed within the establishment upon request.

Section 5(14) A licensed ophthalmic dispenser shall permit the complete inspection of an establishment used in the practice of ophthalmic dispensing upon request.

Section 5(14) A licensed ophthalmic dispenser or apprentice ophthalmic dispenser shall display his license in a conspicuous place in the office in which he practices. He shall also produce, upon request, a current identification card issued by the board.

Section 7. (1) The board may impose a fine not to exceed $3,000 for a violation of KRS 326.090(2).

(2) The procedure for imposing a fine on a person for violation of KRS 326.090(2) shall be conducted in accordance with KRS Chapter 13A and 326.100.

This is to certify that the Chair of the Kentucky Board of Ophthalmic Dispensers has approved this administrative regulation prior to its filing by the Kentucky Board of Ophthalmic Dispensers with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 326.

Granville Smith, Chair
John Farris, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 23, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2007, at 6:00 p.m. at Division of Occupations and Professions, 911 LeaWood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by (month, day, year) five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. 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: Claude Wagner, Director, Division of Occupations and Professions, 911 LeaWood Drive, Frankfort, Kentucky 40602, phone (502) 564-3266, fax (502) 564-4816.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a procedure for the operation and inspection of an optical establishment to determine if the establishment has complied with the licensing requirements.
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide ophthalmic dispensers and optical establishments guidelines to follow for operation and inspection of optical establishments.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 326.030 provides that a person shall not engage in the practice of ophthalmic dispensing unless he is licensed. KRS 326.090(2) authorizes the board to impose a fine against any person who operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser. KRS 326.090(1) authorizes the board to suspend or revoke a license to practice ophthalmic dispensing for a violation of KRS Chapter 326.
(d) Provision of this administrative regulation: This administrative regulation provides for the establishment of procedures for the operation and inspection of an optical establishment.

(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 identifies the fines which are author-
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ized by KRS 326.090(2) against any person operating an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser and establishes a procedure for the operation and inspection of an optical establishment to determine the compliance of licensing requirements.

(b) The necessity of the amendment to this administrative regulation: KRS 326.090(2) authorizes the board to impose a fine against any person who operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser. This administrative regulation establishes a procedure for the operation and inspection of an optical establishment to determine if the establishment has complied with the licensing requirements.

(c) How the amendment conforms to the content of the authorizing statute: KRS 326.020(5)(a) authorizes the board to promulgate administrative regulations necessary to implement the chapter. This administrative regulation establishes a procedure for the operation and inspection of an optical establishments for compliance with the licensing requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by allowing the board to impose a fine against any person who operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser and to establish procedures for the operation and inspection of optical establishments for compliance with the licensing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 150 optical establishments.

(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: Any person operating an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser may be subject to a fine $3000.

(5) 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: Any person operating an optical establishment is required supervision from a Kentucky-licensed ophthalmic dispenser.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A fine not to exceed $3000 for a violation of KRS 326.090(2).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will require optical establishments to comply with KRS 326.090(2).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: 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: 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 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 administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

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 Board of Ophthalmic Dispensers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 326.020(5)(a).

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? 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? None.

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 Chiropractic Examiners (Amendment)

201 KAR 21:060. Clinics; offices.

RELATES TO: KRS 312.019
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(5) provides that the board shall regulate the practice of chiropractic by persons licensed or certified by it. KRS 312.019(9)(d) provides that the board may adopt administrative regulations pertaining to the operations and registration of chiropractic clinics. The purpose of this administrative regulation is to delineate professional standards for chiropractic offices and chiropractic clinics.

Section 1. (1) A licensee shall maintain a chiropractic office in which he receives, diagnoses and treats his patients and maintains their records. Any number of licensees may jointly maintain a chiropractic office.

(2) A chiropractic office shall include a reception room, a toilet, washing facilities and a treatment room containing equipment ordinarily necessary to provide chiropractic services.

Section 2. (1) Two (2) or more licensees may operate a chiropractic clinic to render services requiring specialized skills, knowledge and educational training on the part of the chiropractic clinician and specialized physical facilities not ordinarily possessed by a chiropractor operating a chiropractic office.

(2) All chiropractic clinics shall include:

(a) A reception area;

(b) A treatment room containing equipment necessary to render chiropractic services;

(c) Toilet and washing facilities;

(d) Facilities and equipment necessary to augment adjustments;

(e) Diagnostic x-ray equipment; and

(f) A chiropractic laboratory or reasonably convenient access to the use of a chiropractic laboratory.

(3) All chiropractic clinics shall employ one (1) or more chiropractic assistants including at least one (1) person who shall be a certified radiography operator.

(4) A licensed chiropractor shall be available at the clinic or on call and readily available at all times to render chiropractic services.

(5) All chiropractic clinics shall be certified by the board. Applications for certification shall be made to the board on forms provided by the board which shall be designed to obtain information.

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pertaining to the personnel, facilities, equipment and services to be available at the clinic.

(3) The initial application fee for certification of a chiropractic clinic shall be $250.00. The annual renewal fee for a certified chiropractic clinic shall be $100.00. (The board may charge reasonable fees for certification of chiropractic clinics providing that such fees are preestablished by the board at a duly convened meeting thereof and are uniformly applied.)

Section 3. Incorporation by Reference. (1) "Application for Certification of a Chiropractic Clinic" (2006) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 203 South Green Street, Glasgow, Kentucky 42142 Monday through Friday, 8 a.m. to 4:30 p.m.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: August 10, 2007
FILED WITH LRC: August 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 1, 2007, at 12 p.m., local time, at the Marriott Louisville East, 1903 Embassy Square Blvd., Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2007; five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 September 30, 2007. 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 Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone, (270) 651-2522; fax, (270) 651-8784

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karalee Oldenkamp, Executive Director

(1) Provide a brief summary of: What this administrative regulation does: This administrative regulation specifies the professional standards for chiropractic offices and chiropractic clinics in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that all chiropractic offices and clinics in Kentucky are able to provide basic services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to regulate the practice of chiropractic by persons licensed by it and furthermore, to adopt administrative regulations pertaining to the operations and registration of chiropractic offices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation delineates the basic standards for chiropractic offices and clinics in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the basic standards for chiropractic offices and clinics.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the basic standards which must be maintained at chiropractic offices and clinics throughout the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by delineating professional standards for chiropractic offices and clinics.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will clearly define the standards to be maintained by chiropractic offices and clinics and set forth the fees to be paid.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the approximately 615 chiropractic offices and zero clinics throughout the Commonwealth of Kentucky.

(f) 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: Any chiropractor who wishes to operate a chiropractic clinic shall complete the referenced application and pay the required fee of $250.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The initial application fee for a chiropractic clinic is $250. The annual renewal fee is $100.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3)? This amended administrative regulation will assist interested parties in obtaining information concerning the standards for maintaining and operating chiropractic offices and clinics as well as the cost.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by 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 will be necessary to implement this amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly increase existing fees for certification and renewal of chiropractic offices and clinics. Historically chiropractors have operated offices which do not have fees associated with them from the licensure board. No chiropractic clinics are currently licensed by the board.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who operate chiropractic offices and clinics.

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. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019.

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 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? Each applicant for a clinic will pay an initial application fee of $250. The annual
renewal fee is $100. At this time it is not anticipated that this administrative regulation will generate any money as in the thirty year history of the board, no one has applied for a clinic 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? Each applicant for a clinic will pay an initial application fee of $250. The annual renewal fee is $100. At this time it is not anticipated that this administrative regulation will generate any money as in the thirty year history of the board, no one has applied for a clinic license.

c. How much will it cost to administer this program for the first year? No costs are associated with the administration of this program as this regulation governs chiropractic clinics and to date no one has ever applied to license a chiropractic clinic.

d. How much will it cost to administer this program for subsequent years? No costs are associated with the administration of this program as this regulation governs chiropractic clinics and to date no one has ever applied to license a chiropractic clinic and it is not anticipated that that will change.

GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(Amendment)

201 KAR 21:065. Professional advertising; seventy-two (72) hour right of rescission.

RELATES TO: KRS 312.019(9)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)

(a) Prohibits advertising that is false, deceptive, or misleading. KRS 312.019(9)(a) authorizes the board to regulate forms of advertising. This administrative regulation establishes (4) limits of permissible professional advertising with the aim of adequately informing the public but at the same time establishes limits to safeguard the public from false or misleading statements and nuisance type advertising. KRS 312.019 authorizes the Kentucky Board of Chiropractic Examiners to adopt administrative regulations concerning forms of advertising or solicitation that may be false, misleading, or deceptive and to require a seventy-two (72) hour rescission period for consumers responding to certain forms of solicitation or advertising. This administrative regulation defines the forms of solicitation or advertising wherein the responding consumer is granted a seventy-two (72) hour rescission period.

Section 1. Definitions. (1) "Advertisement of free or discounted services" means any advertisement or solicitation, by any medium, offering free or discounted examinations, consultation, treatment, goods or other services.

(2) "Complete notice of right of rescission" means a conspicuous statement of not less than ten (10) point font in any advertisement of free or discounted services that reads substantially as follows: "You have the right to rescind within seventy-two (72) hours, any obligation to pay for services performed in addition to those for free or discounted service."

(3) "Notice of rescission" means notice by the consumer rescinding any agreement to pay for unadvertised additional services performed or to be performed in addition to the free or discounted service.

(4) "Seventy-two (72) hour right of rescission" means the right of a consumer to rescind within seventy-two (72) hours any agreement to pay for services that are performed the same day in addition to the advertised free or discounted service at an additional unadvertised cost, or any agreement entered into on the same date to submit to a series or course of treatments at an additional unadvertised cost. (A licensee may advertise his services as authorized by this administrative regulation and not otherwise. Advertisements may not be self-helpful or misleading, and shall be confined to the following: (1) Name, including name of professional partnership or professional service corporation, if applicable, and name of chiropractic clinic, if applicable and licensed by the board; and names of professional associates who are licensed chiropractors; (2) Address; (3) Telephone number; (4) Office hours; (5) A statement of the type or services rendered, including, if desired, any limitation or concentration of practice; (6) Time period in which the service would be rendered; (7) A schedule of fees for routine diagnostic services. The fees shall be in effect for no longer than thirty (30) days after the date advertised; and (8) Whether credit cards or other credit arrangements are accepted.)

Section 2. A licensee may advertise his services through any medium as long as the advertisement is not false, deceptive, or misleading and shall include the following:

(a) The business name and address;
(b) Chiropractor's name;
(c) Telephone number;
(d) Expiration date of the advertisement if any; and
(e) Suitable words or letters designating the particular doctor degree held by the chiropractor.

(2) "O.C." shall designate a doctor of chiropractic.

(3) Any deviation from these requirements shall first be approved by the board.

(4) Any advertisement offering a free or discounted service shall include complete notice of the right of rescission, no smaller than ten (10) point font as set out in this administrative regulation. Advertisements may be by radio, television, or in writing. A written advertisement may be sent or delivered to an individual addressee only if that addressee is one (1) of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time, and only if it is not prompted or precipitated by a specific event or occurrence involving or relating to the addressor or advertisements of or to the addressor. A licensee that advertises a fee for routine services and accepts the employment must perform the services for the amount advertised, and a statement to that effect shall be included in every advertisement in which a fee is listed.

Section 3. Consumer Rights, Notice. (1) Any chiropractor advertising free or discounted services shall in any advertisement or solicitation provide the consumer with notice of the seventy-two (72) hour right of rescission.

(2) Within ten (10) days of any notice of rescission, the chiropractor shall tender to the consumer any payment made by the consumer prior to the rescission for any advertised service performed. If no payment had yet been made by the consumer for advertised services, the consumer's account shall not be billed for services performed.

(3)(a) In order to be effective, the notice of rescission shall be given by the consumer to the chiropractor within seventy-two (72) hours of the completion of the advertised service, or agreement to submit to a series or course of treatments.

(b) The notice shall be:
1. In writing; and
2. Express the intention of the consumer to rescind his or her obligation.

(c) If notice of rescission is given by mail, it shall be effective when it is deposited in a mailbox:
1. Properly addressed; and
2. With sufficient postage affixed.

Section 4. (1) A written advertisement may be sent or delivered to an individual addressee if:

(a) The addressor is one (1) of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time; and

(b) It is not prompted or precipitated by a specific event or occurrence involving or relating to the addressor or the addressssee as distinct from the general public.

(2) A licensee that advertises a fee for routine services and accepts the employment shall perform the services for the amount
adversting, and a statement that to that effect shall be included in every advertisement in which a fee is listed.

Section 5. If a complaint is filed with the board regarding an advertisement of a licensee, the board shall request, and the licensee shall furnish, a copy of the advertisement.

Section 6. Advertisement of Designation of Chiropractic Specialty. Advertisement of chiropractic specialties set forth in 201 KAR 21:045 shall include the word “chiropractic” with any specialty designation and conform to the standards set forth in this administrative regulation. No additional specialty designations or certifications shall be listed or abbreviated in any advertisement by the licensee. A licensee advertising chiropractic specialty shall, simultaneously with the publication of the advertisement, mail to the board a copy of any written advertisement, or if by radio or television, a transcript of the words spoken or stated therein. In the instance of an advertisement mailed or delivered to an individual addressee or addressees, the licensee advertising shall, at the same time, mail to the board a copy of the communication and a list of all the persons to whom it is being or will be sent or delivered.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: August 10, 2007
FILED WITH LRC: August 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2007, at 12 p.m., local time, at the Mamet East Louisville, 1903 Embassy Square Blvd., Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 7, 2007. If no hearing is requested, the agency will consider 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 September 30, 2007. 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: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karalee Oldenkamp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation delineates limits of permissible professional advertising with the aim of adequately informing the public but at the same time establishes limits to safeguard the public from false or misleading statements and nuisance type advertising.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards for advertising chiropractic services in an effort to protect the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations regulating the forms of advertising and solicitation. This administrative regulation delineates the permissible forms and format of advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the characteristics of permissible advertising approved by the board, thus placing licensees and the public on notice of the acceptable standards.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the standards for advertising chiropractic services in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the permissible forms of advertising.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by delineating the approved standards for advertising chiropractic services in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the appropriate standards for advertising and should reduce the number of inquiries to the board as well as violations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 791 licensed doctors of chiropractic in the Commonwealth of Kentucky who wish to advertise.

(4) Provide an analysis 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 in question (3) will have to take to comply with this administrative regulation or amendment: The licensees will need to ensure that their advertising complies with the regulations requirements. If a false or discounted service is offered it must include a right of rescission as set forth in this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Currently, the board requires licensees to include a right of rescission in all advertisements for free or discounted services. Thus, no additional costs are foreseen with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Ensuring that advertising is neither false nor misleading benefits licensees from the standpoint that fewer complaints will be filed by consumers.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by 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 will be necessary to implement this amended regulation.

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

(9) TIERING: Is-tiering applied? Tiering was not applied as the criteria apply equally to all licensees advertising chiropractic 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? The Kentucky Board of Chiropractic Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019(3), 312.021, 312.991.
4. Estimate the effect of the 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? Every licensee is required to abide by the rules and regulations governing proper advertising. Failure to do so could result in a fine or other disciplinary action by the board. At this time it is unknown how many advertising violations will be found by the board or what the penalty will be as each case is judged on its merits.

(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? Every licensee is required to abide by the rules and regulations governing proper advertising. Failure to do so could result in a fine or other disciplinary action by the board. At this time it is unknown how many advertising violations will be found by the board or what the penalty will be as each case is judged on its merits therefore it is impossible to estimate the amount of money spent on attorney costs or board time.

(c) How much will it cost to administer this program for the first year? Every licensee is required to abide by the rules and regulations governing proper advertising. Failure to do so could result in a fine or other disciplinary action by the board. At this time it is unknown how many advertising violations will be found by the board or what the penalty will be as each case is judged on its merits therefore it is impossible to estimate the amount of money spent on attorney costs or board time.

(d) How much will it cost to administer this program for subsequent years? Every licensee is required to abide by the rules and regulations governing proper advertising. Failure to do so could result in a fine or other disciplinary action by the board. At this time it is unknown how many advertising violations will be found by the board or what the penalty will be as each case is judged on its merits therefore it is impossible to estimate the amount of money spent on attorney costs or board time.

COMMERCE CABINET
Department Of Fish And Wildlife Resources
(Amendment)

301 KAR 5:050. Purchasing licenses electronically.

RELATES TO: KRS 150.195, 150.225, 150.235
STATUTORY AUTHORITY: KRS 150.025(1), 150.195(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 150.195 requires the department to provide for the issuance of all licenses and permits. This administrative regulation establishes the procedures for purchasing licenses over the internet or the telephone.

Section 1. A person may remotely purchase a license or permit from the department by:

(1) Connecting through the internet or by telephone; and
(2) Providing the following information at the time the license is purchased:
   (a) Full name;
   (b) Complete mailing address;
   (c) Date of birth;
   (d) [Driver's license or] Social Security number;
   (e) [Telephone number or e-mail address;]
   (f) A valid and accepted form of payment [Visa or Mastercard number and expiration date];
   (g) If the purchaser [is under age sixty-five (65) and] wishes to purchase a [senior/disabled license, he shall provide the number from the licensee's unexpired disability authorization card; and
   (h) If a waterfowl permit was purchased, the Kentucky Migratory Bird Harvest Information Program information as required by 301 KAR 5.040.

(3) Paying a processing fee as agreed upon in a contract with the department, or equal to six (6) percent of the total cost of all licenses purchased prior to December 1, 2006. Effective December 1, 2008, the department shall no longer charge the six (6) percent processing fee.

Section 2. (1) The department shall not complete a transaction not approved by the credit card company.
(2) Upon completion of the license transaction, the department shall issue an authorization number to the license purchaser.
(3) The authorization number shall serve in lieu of the paper license. A person, while performing an act authorized by the license, shall carry upon his person and present upon request to a law enforcement officer:
   (a) The authorization number;
   (b) Identification that has a picture and date of birth; and
   (c) If the purchaser [is under age sixty-five (65) and] purchases a [senior/disabled license, an unexpired disability authorization card issued to the license recipient and proof of Kentucky residency.
   (4) A person using an authorization number in lieu of a deer, elk, or turkey permit shall:
      (a) Before hunting, write his name, address and applicable authorization number on a card;
      (b) Immediately after taking an animal, write the date the animal was taken, the species and the sex of the animal on the card;
      (c) Complete any check-in procedure required for that species, which includes a photo ID number and signature;
      (d) If the carcass is out of the hunter's possession, the hunter shall attach another card to the carcass containing the hunter's name, address, authorization number, date the animal was taken, species, and telecheck authorization number, if already obtained.

MARK S. Cramer, Deputy Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 11a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007, at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsmen's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 1, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsmen’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rose Mack
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation identifies the means and methods of obtaining licenses and permits electronically via the internet.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public and potential customers of the method for obtaining licenses and permits electronically.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of Fish and Wildlife Resources is authorized by KRS 150.175 to promulgate administrative regulations establishing licenses and permits. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes which information is required for electronic license purchases in accordance with KRS 150.195.
(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 outlines revisions to the existing information required to purchase a license or permit electronically. It also addresses the necessity of the amendment to this administrative regulation: this amendment is necessary to inform the public and potential customers of changes made in order to purchase licenses or permits. The changes made are necessary in order to comply with the provisions of federal regulation, Title 42, Section 666, titled "Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement." Subsection (a)(13) of this requirement calls for "procedures requiring the social security number of (A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application." The Department of Fish and Wildlife Resources' licenses and permits are understood to be "recreational license." Subsection (a)(16) also requires that states have procedures under which they may "withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue child support proceedings." By securely maintaining customers' social security numbers, the Department of Fish and Wildlife Resources can comply with these two requirements and respond appropriately if called on to assist child support enforcement agencies in Kentucky. The social security number is a single identifier. The enhanced identifier offers greater confidentiality for performance of law enforcement functions and allows for more efficient compliance checks. Finally, the social security number is currently used to telematch harvest information. By requiring the social security number as part of the license and permit sale, these two systems will be consistent and compatible. The Department's Wildlife Division will be capable of performing comparisons and analysis on both of these databases to provide for more complete findings and conclusions to use in providing the best enforcement efforts and resource management.
(b) How the amendment conforms to the authorizing statutes: See 1(c) above.
(c) How the amendment will assist in the effective administration of the statutes: See 1(d) above.
(d) The type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: Approximately one million sport license and permit buyers could potentially be affected by the change in requirements in this regulation. In 2006, the Department of Fish and Wildlife Resources sold approximately 53,000 licenses on-line.
(e) Provide an analysis of how the entities identified in question (3) will be impacted by the change in requirements in this regula-tion, 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: One million sport license and permit buyers will be impacted by a change in information required to purchase a license or permit electronically. Customers will be required to provide their social security number in order to purchase a license or permit.
(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.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The customers will be able to legally participate in hunting, fishing and other wildlife-related activities governed by the Department of Fish and Wildlife Resources. Customers will have better records on file with the Department of Fish and Wildlife Resources ensuring the ability to find lost licenses and match harvest reports to license holders for law enforcement compliance and better resource management.
(f) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no cost initially to implement this administrative regulation.
(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.
(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the state Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funds will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There will be no increase in fees to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to the administrative regulation will not change any fees associated with the regulations.
(9) TIERING: Is tiering applied? No tiering is applied as those affected by the administrative regulation are treated the same.

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 Department of Fish and Wildlife Resources is the division of state government that 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. The Department of Fish and Wildlife Resources is authorized by KRS 150.195 to promulgate administrative regulations establishing methods for control, issuance and distribution of licenses and permits.
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. There will be no fiscal impact for the first full 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 the first full year? The administrative regulation will not generate any revenue 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? The administrative regulation will not generate any revenue 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 administrative regulation 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 administrative regulation 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:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

RELATES TO: KRS 156.160, 161.145, 189.540, 49 C.F.R. 382.101-382.605

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of pub-
lic school children. KRS 189.540 requires the state board to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver or driver of a special vehicle used to transport school children to and from school and events related to the school. A district may require a school bus driver to pass a routine medical examination or a special type medical examination more often than annually at the district's expense. A current medical examination certificate (TC 94-35E and the Supplement to TC 94-35E) for each school bus driver shall be retained by the district.

(2) The medical examination shall include tests for:
(a) Hearing and vision disorders,
(b) Emotional instability; and
(c) Serious medical conditions including:
   1. Diabetes;
   2. Epilepsy;
   3. Heart disease; and
   4. Other chronic or communicable diseases if indicated in the opinion of the licensed medical examiner.

(3) The examination shall include risk assessment and appropriate follow-through, as established in 702 KAR 4:020. Section 1, [tests] for tuberculosis upon initial employment [and positive reactors shall be required to have further evaluations].

(4) A medical examination of a school bus driver shall be reported on Form TC 94-35E and the Supplement to TC 94-35E to the local superintendent or his designee.

Section 2. (1)(a) A criminal records and driving history check shall be performed by a local district on school bus drivers prior to initial employment and after a break in service (excluding summers).

(b) Employment shall be contingent upon meeting the requirements of paragraph (a) of this subsection. A local board of education shall adopt policies outlining employment qualifications as related to these criminal records and driving history checks.

(c) A school bus driver shall immediately report to the local superintendent or his designee:
   1. Revocation of his driver's license,
   2. Conviction for DU/DWI;
   3. Conviction for reckless driving; or
   4. Citation for any moving motor vehicle violation including
      DU/DWI and reckless driving.

(2)(a) Controlled substance and alcohol use testing shall be a condition of employment for anyone in a safety sensitive position, including:
   1. School bus drivers;
   2. School bus mechanics; and
   3. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use testing program shall include the following tests:
   1. Preemployment testing (controlled substance only);
   2. Postaccident testing;
   3. Random testing; and
   4. Reasonable suspicion testing.

(c) Prospective employees who have tested positive for a controlled substance within the last five (5) years shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment for five (5) years.

(e) A school bus driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment in a safety-sensitive position for five (5) years.

(f) A person shall not be employed as a school bus driver if convicted within the past five (5) years of driving a motor vehicle under the influence of alcohol or any illegal drug.

(g) A person shall not drive a school bus unless the person is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that would limit the driver's ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver.

(h) A driver taking medication either by prescription or without prescription shall report to the Immediate supervisor and shall not drive if that medication would affect the driver's ability to safely drive a school bus or perform other driver responsibilities.

Section 3. (1) A person shall not drive a school bus unless the person has:

(a) Visual acuity of at least 20/40 (Snellen) in each eye either without corrective lenses or by correction with corrective lenses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) A driver requiring correction by corrective lenses shall wear properly prescribed corrective lenses at all times while driving.

Section 4. A person shall not drive a school bus if the person's hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels in either ear.

Section 5. A school bus driver shall be at least twenty-one (21) years of age.

Section 6. (1) A school bus driver shall have a current driver's license that is valid in Kentucky. A school bus driver shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the school bus driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in "Preemployment Road Test" [January, 2002].

(b) The Preemployment Road Test Score Sheet supplied by the Department of Education shall become a part of the driver's training record.

(c) A driver shall demonstrate the following skill levels:
   1. Vehicle knowledge; and
   2. Driver ability to perform steering, maneuvering, braking, use mirrors, and demonstrate each of the following:
      a. Ninety (90) degree left hand turns steering technique;
      b. Ninety (90) degree right hand turns steering technique;
      c. Operating posture;
      d. Visual awareness;
      e. Backing ability using mirrors only; and
      f. Demonstration of spatial awareness.

Section 7. (1) Minimum training requirements to become a school bus driver shall consist of the training course developed by the Kentucky Department of Education and three (3) driver review, evaluation and instruction components.

(2)(a) A person shall not be certified to teach the school bus driver training curriculum until that person has:

(1) [1] Satisfactorily completed a minimum of thirty-three (33) hours classroom and driving instruction, conducted [or approved] by the Department of Education and relevant to the driver training curriculum;

(b) [2] Been issued an instructor's certificate by the commissioner of education.

(c) Instructors shall be required to renew their certificates annually by completing six (6) hours of update training conducted [or approved] by the Department of Education.

(4) The School Bus Driver Training Course core curriculum
shall consist of the following instructional units and minimum instructional times:
(a) Laws and regulations two (2) hours;
(b) Driving fundamentals two (2) hours;
(c) Care and maintenance two (2) hours;
(d) Critical situations one (1) hour;
(e) Incidents and emergency procedures two (2) hours;
(f) Pupil management two (2) hours;
(g) First aid one (1) hour;
(h) Special education transportation one (1) hour;
(i) Extracurricular trips one (1) hour;
(j) Vehicle operations three (3) hours;
(k) Vehicle control at speed one (1) hour; and
(l) Bus route identification, driver review and instruction - two (2) hours.

5. Upon successful completion of the core curriculum, the school bus driver applicant shall complete the following:
(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving;
(b) Driver review II, evaluation and instruction - two (2) hours after not less than twenty (20) days nor more than thirty (30) days of driving; and
(c) Driver review III, evaluation and instruction - one (1) hour within three (3) to six (6) months of completion of driver review II. Driver review III shall be done with students on the bus.

Section 8. (1) Prior to the beginning of each school year, a certified driver shall complete an eight (8) hour training update relevant to the curriculum prior to the beginning of the school year. Each district shall be responsible for planning and conducting its own [the] update based on the needs of its drivers. A district unable to administer its own eight (8) hour update shall receive prior written approval from the Department of Education before sending a driver to receive the training from another district.

(2) Discontinuance of driver employment and subsequent re-employment shall require that the driver become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 9. If an emergency makes it necessary for the driver to leave the bus while pupils are on board, the driver shall:
(1) Move the bus to a safe location if possible;
(2) Stop the engine;
(3) Shift the bus to low gear, or place in neutral if automatic equipped;
(4) Set the parking brake;
(5) Remove the ignition key; and
(6) Place one (1) of the older responsible pupils in charge during the driver’s absence if appropriate.

Section 10. A driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 11. (1) A driver shall supervise the seating of the pupils on the bus. A driver may assign a pupil to a specific seat on the bus.

(2) The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle. A driver shall not permit pupils to stand:
(a) In the stepwell or landing area,
(b) If the pupil would likely fall out of the bus if the emergency door were opened; or
(c) If the driver’s view directly in front of the bus or to either side of the front of the bus would be obscured.

(3) A driver shall report to the superintendent or a designee any overcrowded conditions on the bus.

Section 12. (1) A driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or a designee.

(2) A driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or a designee.

Section 13. A driver shall not transport adult employees of the board or any person not employed by the board of education unless provided with written permission from the district superintendent or a designee.

Section 14. A board of education shall develop a policy on what may or may not be transported on a school bus. The policy shall include the following:
(1) A driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported on the bus; and
(2) A driver shall not permit to be transported on the bus:
(a) Any live animals, except for an animal that is:
   1. To enable a person to safely utilize the bus transportation as documented by:
      a. Adequate medical evidence; or
      b. A student’s Individual Education Plan; and
   2. Not a risk to other bus riders;
(b) Preserved specimen that would likely frighten any pupil or cause a commotion on the bus, or
(c) Glass objects or helium balloons.
(3) A driver shall not permit the transportation of any object that would block the bus aisle or exits.

Section 15. A driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 16. (1) A driver shall activate the flashing amber signal lights at least 150 feet, if available, or a sufficient distance from a bus stop to warn motorists of the intended stop.
(2) Once the bus comes to a complete stop, the driver shall follow the loading and unloading procedure outlined in Chapter 7 [6] of the Driver Training Instructors Manual.

Section 17. For safety reasons, a driver shall not permit fueling of the bus while pupils are on board the bus.

Section 18. (1) If a pupil’s conduct on the bus makes it unsafe for the bus to continue on its route, the driver shall:
(a) Make a determination as to the potential danger to other students on the bus; and
(b) Take action against the student by:
   1. Requesting that the student stop engaging in the prohibited conduct;
   2. If feasible, sending for assistance if the student fails to comply with the driver’s order or request;
   3. Ordering the student to leave the bus; or
   4. Ejecting the pupil from the bus.
(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.
(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the immediate supervisor who shall notify the appropriate district authorities, who shall subsequently notify the student’s parent or legal guardian according to local board policy.

Section 19. A school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.
(1) After making the stop, the driver shall:
(a) Set the parking brake;
(b) Shift to neutral;
(c) Activate the noise abatement switch;
(d) Open the service door and driver side window; and
(e) Carefully look in each direction and listen for approaching
trains before proceeding.

(2) If visibility is impaired at a crossing, after stopping the driver may allow the vehicle to roll forward to gain required visibility before proceeding.

(3) When a driver has ascertained that it is safe for the bus to cross the railroad tracks, the driver shall:
   (a) Close the bus entrance/exit doors;
   (b) Shift the bus [gears] into the lowest gear [range] that will provide adequate power;
   (c) Release the parking brake,
   (d) Proceed immediately to cross the railroad tracks; and
   (e) Turn the noise abatement switch off when safe to do so.

Section 20. A driver shall perform and document [make] a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 21. (1) A school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels.

(2) A driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 22. A driver shall wear the driver's seat belt at all times that the bus is operated.

Section 23. A stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 24. A driver shall not use tobacco products on the school bus and shall not permit pupils to use tobacco products on the school bus.

Section 25. A driver shall signal pupils to board or leave the bus when the driver has determined that any visible approaching traffic [creating a substantive risk of harm] has come to a complete stop and is not attempting to start up or pass the bus.

Section 26. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. A driver found under the influence of alcohol or any illegal drug while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 27. A driver of a school bus shall be on the bus at all times students are loading or unloading.

Section 28. A driver shall inspect the school bus at the completion of each bus run to ensure that no students remain on the bus.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:
   (b) "Preemployment Road Test", January 2002 [July, 1996]; Division of Pupil Transportation, Department of Education;
   (c) "Driver Training Instructors Manual", July 5, 2004 [July 9, 1996]; and
   (d) "Preemployment Road Test Score Sheet", January 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Division of Pupil Transportation Branch, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: August 15, 2007
FILED WITH LRC: August 15, 2007 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 24, 2 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Noland

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the qualifications and responsibilities of school bus drivers.
   (b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 189.540, and 49 C.F.R. 382.101-382.606.
   (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the qualifications required for school bus drivers and the responsibilities of operating a school bus.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the qualifications and responsibilities of school bus drivers.
   (e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation: This amendment deletes the requirement for a tuberculosis skin test (TST) as part of the medical examination.
tive regulation: school district administrators, prospective bus drivers, parents, and students.

(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: The proposed amendment will impact prospective bus drivers by allowing a TB risk assessment rather than a TST.

(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: None

(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): Individuals will not be subjected to needless medical procedures and the reporting of “false positives.”

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds are needed for enforcement.

(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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and prospective employees.

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? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 189.540, and 49 C.F.R. 382.101-382.605.

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 additional expense to school districts.

(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? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require 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: 

EDUCATION CABINET
Kentucky Board of Education
Department of Education (Amendment)

704 KAR 4:020. School health services.

RELATES TO: KRS 155.160, 161.145
STATUTORY AUTHORITY: KRS 156.070, 156.160, 214.324
NECESSITY, FUNCTION, AND CONTENT OF EDUCAFORMITY: KRS 156.160
requires the Kentucky Board of Education to adopt administrative regulations governing medical inspection, physical education and recreation, and other rules and administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. This administrative regulation establishes standards and criteria for preventative health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) A local board of education shall require a medical examination of each certified and classified employee, including each substitute teacher, prior to initial employment that shall include a tuberculosis [tuberculin] (TB) risk assessment [skin test]. If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST). The TB risk assessment may be performed and reported by a physician, an advanced registered nurse practitioner, a physician’s assistant, or a registered nurse.

(2) The [The] medical examination requirement shall not apply to bus drivers who are covered by 702 KAR 5:880.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) (69) A medical examination shall be reported on the form, "Medical Examination of School Employees".

(5) (69) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health[. Cabinet for Health Services] for further evaluation and treatment of the tuberculosis infection.

(6) (44) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent a statement indicating the employee’s [the] medical status. The medical examination shall be performed and signed for by a physician, physician assistant, or an advanced registered nurse practitioner.

(7) Documentation of a tuberculin [5-T] skin test and chest x-ray when performed, [documentation] shall include:

(a) The date given;

(b) Type of test;

(c) Millimeters of induration;

(d) Date read and by whom; and

(e) Date x-ray taken and results as related to tuberculosis status, or that no further follow-up is necessary unless signs of symptoms of tuberculosis develop.

(8) (69) A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a tuberculosis (TB) risk assessment and examinations as indicated [be examined for tuberculosis]. The evaluation and any recommended [required] treatment for tuberculosis infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health[. Cabinet for Health Services].

(a) An employee exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the directives of the local board of health.

(b) In a county with an [a-high] incidence of cases of active [rate-for] tuberculosis [infected] that is equal to or greater than the national average [one-ten percent], the local board of health may, with the approval of the Kentucky Department for Public Health[. Cabinet for Health Services] require more extensive testing of school district employees for tuberculosis [than outlined above].
Section 2. Preventative Health Care Examinations. (1) A local board of education shall require a preventative health care examination of each child within one (1) year prior to the child’s initial admission to school. A second examination shall be required within one (1) year prior to entry into the sixth grade, or initial admission to school. A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade or initial admission to school. (2) An out-of-state transfer student shall be required to have documentation of preventative health care examination. (3) A local school board may extend the deadline by which to obtain either preventative health care examination, not to exceed two (2) months. (4) A preventative health care examination may be performed and signed for by a physician, an advanced registered nurse practitioner, a physician’s assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs. (5) A preventative health care examination shall be reported on the form “Preventative Health Care Examination Form,” [dated December 1996] and shall include: (a) A medical history; (b) Assessment of growth and development and general appearance; (c) Physical assessment including hearing and vision screening; and (d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. (6) A vision examination shall be reported on the form, “Kentucky Eye Examination Form for School Entry” [dated August 2000]. (7) A record of immunization shall be submitted on a valid immunization certificate. (8) A local school district shall establish a plan for implementation and compliance required for the sixth grade preventative health care examination. (9) A valid Immunization certificate shall be on file within two (2) weeks of the child’s enrollment in school. (10) PB-keeping shall be carried out upon notification by a local health department. (11) A board of education shall adopt a program of continuous health supervision for all school enrollees. Supervision shall include scheduled, appropriate screening tests for vision, hearing, and scoliosis. (12) A local spinal screening program for scoliosis shall include: (a) Training sessions for teachers or lay volunteers who will be doing the screening; (b) Obtaining parental permission for scoliosis screening; (c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria; (d) Mandated education of students regarding scoliosis screening; and (e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include: 1. Notification of parents of students who need further evaluation by a physician; 2. Tracking referrals to determine whether all children with abnormal screening results receive appropriate diagnosis and treatment; and 3. Reporting of data on screening, referral and follow-up tracking to the Department of Education. (13) The Department of Education shall: (a) Monitor the spinal screening and referral programs provided by local boards of education; (b) Provide consultation and technical assistance to local school districts [boards of education] concerning spinal screening, referral and follow-up for appropriate diagnosis and treatment; and (c) Encourage local school districts [systems] to work cooperatively with local health departments and local Commission for Children with Special Health Care Needs offices to plan, promote, and implement scoliosis screening programs. (14) A school shall have emergency care procedures. The emergency care procedures shall include: (a) First aid facilities, including provisions for designated areas for the child to recline; (b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school who is certified in a standard first aid course which includes CPR for infants and children; (c) Parents’ telephone number, or a number at which parents can be reached; (d) Name of family physician; and (e) Means of transportation. (15) A local board of education shall require immunizations as required by KRS 141.054.

Section 3. Cumulative Health Records. (1) A school shall initiate a cumulative health record for each pupil entering its school. The record shall be maintained throughout the pupil’s attendance. The record shall be uniform and shall be on the form “Pupil’s Cumulative Health Record”. The record shall include screening tests relevant to growth and development, vision, hearing, and scoliosis, and findings and recommendations of a physician and a dentist. A follow-up by the proper health or school authorities shall be made on each abnormality noted and the result shall be recorded. (2) A local school authority shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. Physical Environment. A board of education shall provide and maintain a physical environment that is conducive to the health and safety of school children in each school under its jurisdiction. A local board of education shall comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety. A local board of education shall establish: (1) An adequate supply of water of safe, potable, sanitary quality; (2) A state-approved sanitary disposal of sewage, other water carrier waste, and solid waste; (3) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands, and continuous sanitary fixtures; (4) Adequate heating, lighting, and ventilation in all school buildings; (5) Adequate facilities and equipment for cafeterias and lunchrooms; (6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment; (7) Adequate first aid facilities; (8) Adequate control of air pollutants; and (9) Universal precautions guidelines compatible with Occupational Safety and Health Administration guidelines, 29 C.F.R. 1910.1030.

Section 5. A superintendent shall designate a person to serve as school district health coordinator. The person designated shall meet the minimum qualifications required of this position as determined by the Educational Professional Standards Board in 16 § 1704 KAR Chapter (3) [20] or by the Kentucky Department of Education in the "Kentucky Local District Classification Plan for Classified Employees", Class Code: 7271, Class Title: School District Health Coordinator, dated December 1999. The school district health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of Education, the local health department, family resource and youth services centers and parents in planning, promoting, and implementing a school health services program.

Section 6. Incorporation by Reference. (1) The following documents are incorporated by reference. (a) "Medical Examination of School Employees", dated De-
In skin test (TST) as a part of the medical examination required as a condition of initial employment in our public schools. The TST is replaced with a "tuberculosis risk assessment". If that assessment determines the person to be at high risk for tuberculosis (TB) then a TST is required.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the tuberculosis control program protocols established by the Centers for Disease Control and Prevention (CDC) and adopted by the Kentucky Department for Public Health (DPH).

(c) How the amendment conforms to the content of the authorizing statute. This amendment conforms to the authorizing statute by specifying the requirements of the school employee medical examination.

(d) How the amendment will assist in the effective administration of the statutes. This amendment will provide to schools specific policies for the school employee medical examination.

(e) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, prospective certified and classified employees, students.

(f) 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: The proposed amendment will impact prospective employees by allowing a TB risk assessment rather than a TST.

(g) The amendments that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(h) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(i) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will not be subjected to needless medical procedures and the reporting of "false positives".

(j) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: The proposed amendment does not result in additional costs.

(k) On a continuing basis: The proposed amendment does not result in additional costs.

(l) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds are needed for enforcement.

(m) 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, if no: (a) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(n) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and prospective employees.

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? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.170, 161.140, 214.034
4. Estimate the effect of this administrative regulation on the respective annual 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 additional expense to school districts.

(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? The proposed amendment will require no additional cost.
(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require 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 Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:422. Rollover protective structures; overhead protection.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.1000 - 1003

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1000 to 1003 establishes the federal requirements relating to rollover protective structures and overhead protection. This administrative regulation establishes standards to be enforced by the Office [Division] of Occupational Safety and Health Compliance in the construction industry relating to rollover protective structures and overhead protection.

(2) "Employee" is defined in KRS 338.015(2).
(3) "Employer" is defined in KRS 338.015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation:
(1) 29 C.F.R. 1926.1000 through 29 C.F.R. 1926.1003, and Appendix, revised July 1, 2007 [2006]; and

PHILIP J. ANDERSON, Chairman
APPROVED BY AGENCY: July 23, 2007
FILED WITH LRC: August 2, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007 at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Chuck Stribling, CSP, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 584-3070, fax (502) 584-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck Stribling, CSP
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 C.F.R. 1926.1000 through 1926.1003 and Appendix. Section 2 updates the Code of Federal Regulations to July 1, 2007, and establishes the amendment to Subpart W published in the July 20, 2006, Federal Register, Volume 71, Number 139 which makes technical amendments and corrections to the construction industry standard addressing rollover protective structures (ROPS) for wheel type agricultural and industrial tractors used in construction.

On December 29, 2005, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register reenacting its original construction and agriculture standards that regulate the testing of ROPS used to protect employees who operate wheel-type tractors. OSHA received one (1) comment to the direct final rule recommending a number of clarifications to the original ROPS standards published in the direct final rule. In the rule published July 20, 2006, OSHA promulgated corrections and technical amendments to the ROPS standards. In response to the comment, correct editorial errors found in the ROPS standards published in the 2005 direct final rule, and improves consistency among the figures in the standard.

This amendment does not change the requirements of the ROPS standards. It simply amends the comment to the 2005 final rule and makes a number of corrections and technical amendments by correcting typographical errors, adding decimal points, and replacing illustrations found in the standard with state of the art computer generated images that are cleaner and more comprehensible.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1925 and 1926 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the 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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 C.F.R. 1926.1000 through 1926.1003 and Appendix. Section 2 updates the Code of Federal Regulations to July 1, 2007;
and, establishes the amendment to Subpart W published in the July 20, 2006, Federal Register, Volume 71, Number 139 which makes technical amendments and corrections to the construction industry standard addressing ROPS for wheel type agricultural and industrial tractors used in construction.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1925 and 1926 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, provides all a clear understanding of the requirements, and makes the requirements a part of the standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 have to take any action to comply with this amendment. This amendment makes a number of corrections and technical amendments by correcting typographical errors, adding decimal points, and replacing illustrations found in the standard with state of the art computer generated images that are clearer and more comprehensible.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment makes a number of corrections and technical amendments by correcting typographical errors, adding decimal points, and replacing illustrations found in the standard with state of the art computer generated images that are clearer and more comprehensible. This amendment requires no expenditures by either public or private employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

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

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

(g) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1925 and 1926 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1925 and 1926 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

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 any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, 29 C.F.R. Parts 1925 and 1953.

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? 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? This amendment will not impose any cost. This amendment makes a number of corrections and technical amendments by correcting typographical errors, adding decimal points, and replacing illustrations found in the standard with state of the art computer generated images that are clearer and more comprehensible. This amendment requires no expenditures by either public or private employers.
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(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment makes a handful of corrections and technical amendments by correcting typographical errors, adding decimal points, and replacing illustrations found in the standard with state of the art computer generated images that are clearer and more comprehensible. This amendment requires no expenditures by either public or private employers.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Labor
Office Of Workers' Claims
(Amendment)


RELATES TO: KRS 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

STATUTORY AUTHORITY: KRS 342.020, 342.260(1), 342.735(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.250(1) requires the Executive Director [Commissioner] of the Office [Department] of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.325 requires that a question arising under KRS Chapter 342 which is not settled by agreement of the parties shall be determined by an administrative law judge. KRS 342.735(1) requires the executive director [commissioner] to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation establishes a procedure for the resolution of a medical dispute before an administrative law judge.

Section 1. Procedure for all medical disputes except those filed for chiropractic peer review governed by Section 7 of this administrative regulation. (1) A dispute regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of a medical expense, treatment, statement, or service which has been rendered or will be rendered under KRS Chapter 342 shall be resolved by an administrative law judge following the filing of a Form 112 (Medical Dispute).

(2) Form 112 may be filed by an employee, employer, carrier or medical provider.

(3) The Form 112 shall be accompanied by the following items:

1. Copies of all disputed bills;
2. Supporting affidavit setting forth facts sufficient to show that the movant is entitled to the relief sought;
3. Necessary supporting expert testimony; and
4. The final decision from a utilization review or medical bill audit with the supporting physician opinion.

(b) A single Form 112 may encompass statements, services, or treatment previously rendered as well as future statements, services, or treatment of the same nature or for the same condition, if specifically stated.

(4)(a) If the contested expense or medical procedure or treatment is subject to utilization review, the utilization review process shall be exhausted pursuant to 803 KAR 25-190 before any party may file a medical dispute with the Office of Workers' Claims.

(b) Pursuant to 803 KAR 25-190, a party shall have thirty (30) days following an independent utilization review decision to file a medical dispute.

(5) Repeated filings of identical Form 112's concerning the same subject matter shall not be necessary if an administrative law judge has ruled on both the past expenses and the necessity of future expenses.

(b) A party aggrieved by a decision of the administrative law judge in a medical dispute may appeal to the Workers' Compensation Board by following the procedures established in 803 KAR 25-010, Section 21.

Section 2. No claim filed. (1) If an application for adjustment of claim concerning the injury or disease which is the subject of the dispute has not been filed, copies of the Form 112 and attachments sufficient to serve the other parties, including the employee, employer, and medical provider, shall be filed with the executive director [commissioner], who shall make service on the named parties.

(a) A written response to the Form 112 may be filed by an opposing party if it meets the following:

1. A response shall be filed within twenty (20) days of the date of service by the executive director;
2. A response shall be served on the executive director and all other parties within the twenty (20) days described in subparagraph 1 of this paragraph; and
3. A response shall be accompanied by an affidavit setting forth facts sufficient to show that the movant is not entitled to the relief sought. An opposing party may, within twenty (20) days after service by the commissioner, file a response, accompanied by affidavit setting forth facts sufficient to show that the movant is not entitled to the relief sought.

(c) An opposing party may, within twenty (20) days after service by the commissioner, file a response, accompanied by affidavit setting forth facts sufficient to show that the movant is not entitled to the relief sought.

(d) A response shall be served on the commissioner and all other parties within the twenty (20) day limit established in paragraph (b) of this subsection.

(e) The dispute shall be assigned to the Frankfort motion docket, where it shall be summarily decided upon the pleadings or assigned for further proceedings before an administrative law judge.

Section 3. Claim filed. (1) If an application for adjustment of claim concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the executive director [commissioner] and shall also serve copies on the other parties of record.

(a) The movant shall [further] file a motion to join the medical provider as a party to the claim and [ ];

(b) This motion shall conform with the requirements of 803 KAR 25-010, Section 4.

Section 4. Post Award. (1) Following resolution of a workers' compensation claim by final order, a motion to reopen pursuant to 803 KAR 25-010, Section 4(6), shall be filed in addition to the Form 112.

(a) Unless utilization review has been initiated, the motion to reopen Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25-096.

(b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers whose services or charges are in issue.

(c) If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.

(d) This dispute shall be assigned to the Frankfort motion docket, where it shall be summarily decided upon the pleadings, or assigned to an administrative law judge for further proof time and final resolution.

(e) The employer shall bear the burden of going forward by filing a Motion to Reopen and Form 112 when the dispute:

1. Concerns services which have been rendered to the employee;
2. Relates to causation or other issues not subject to utilization review;
3. If the dispute concerns a request for pre-authorization or precertification of a medical service which has been denied following utilization review, the burden of going forward shifts to the employee and shall be filed pursuant to the requirements of 803 KAR 25-012 and 803 KAR 25-190.

(c)(e) Except as provided by paragraph (b) of this subsection, a Form 112 shall be accompanied by a motion for a partial

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remand to the administrative law judge assigned to the claim if an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute.

(b) If entitlement to medical services is dependent upon resolution of an issue on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(16) If the contested expense is subject to utilization review, a medical dispute shall not be filed prior to exhaustion of the utilization review process. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review decision to file a medical dispute.

(17) Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if an administrative law judge has ruled on both the past expenses and the necessity of future expenses.

(18) A party aggrieved by a decision of the administrative law judge in a medical dispute may appeal to the Workers' Compensation Board by following the procedures established in 803 KAR 25-010, Section 20.

Section 5 [22]. In accordance with KRS 342.310, a sanction (1) shall be assessed, as appropriate, if:

(a) An employer or a medical payment obligor challenges a bill without reasonable medical or factual foundation; or

(b) A medical provider, without reasonable foundation, submits a bill for a nonwork-related condition to an employer or its medical payment obligor; and

(2) May be imposed if a movant files a medical dispute prior to exhaustion of the required utilization review or medical bill audit procedures.

Section 6. [23.] Expedited Medical Disputes. (1) If a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer shall file a written request on Form 120EX to seek an expedited determination.

(2) The Form 120EX shall be filed with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A;

(b) An affidavit of a physician which shall:

1. Explain why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee;

2. Include:
   a. The diagnosis of the patient;
   b. The clinical and diagnostic findings upon which the diagnosis is based;
   c. The proposed treatment;
   d. The reason why immediate initiation of the proposed treatment is necessary; and

3. If feasible, an estimate of the cost of the proposed treatment;

(3) Comply with the format established in Appendix B; and

(c) Other affidavit or authenticated document necessary to demonstrate that the movant is entitled to the relief sought.

(2) [26] If a claim is currently assigned to an administrative law judge, the written request shall be directed to that administrative law judge.

(3)(2) [23] The Form 120EX and attachments shall be filed in triplicate with the executive director [commissioner] who shall serve copies on the named parties.

(a) A respondent to a Form 120EX may file a response within ten (10) days of the date on which the Form 120EX is served by mail. Services shall be deemed complete the third day after mailing by the executive director [commissioner].

(b) A response shall be accompanied by an affidavit setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(4) The administrative law judge may refer the matter to a worker's compensation specialist or an ombudsman to attempt to effectuate a resolution of the dispute.

(5) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 7. Chiropractic Peer Review. (1) The Chiropractic Peer Review committee shall be appointed by the Executive Director of the Office of Workers' Claims;

(b) The committee shall contain five (5) chiropractors who:

1. Shall have completed a minimum of sixty (60) hours of utilization review training at a chiropractic college accredited by the Council on Chiropractic Education; and

2. Shall annually complete a six (6) hour course in utilization review approved by the Kentucky Board of Chiropractic Examiners.

(c) Each committee member shall serve for a two (2) year term; and

(d) The jurisdiction of the committee shall be limited to:

1. Disputes over the reasonableness and necessity of chiropractic care and treatment; and

2. By agreement of the parties, issues on work-relatedness or causation.

(2) A joint request for a chiropractic peer review shall be filed by a chiropractor and insurance carrier or self-insured employer for chiropractic peer review with the Office of Workers' Claims.

(a) A request shall be made by completing the Form EZ in full;

(b) The parties shall attach to the Form EZ all pertinent written materials or medical documents that are relevant to the dispute;

(c) The Form EZ and attachments shall be filed with the Office of Workers' Claims, Claims Assignment Section;

(d) The parties shall certify that a copy of the Form EZ and attachments have been served on the employee;

(e) The parties shall show payment of $250 which shall be:

1. Attached to the Form EZ; and

2. Made payable to the Workers' Compensation Chiropractic Peer Review Committee, Inc.; and

(f) The parties agree upon the filing of a Form EZ to be bound by the professional opinions and factual findings of the reviewing member as to the specific issue in the dispute.

(3) An administrative law judge shall rule upon the request for chiropractic peer review;

(4) The administrative law judge may enter an order referring the matter for assignment to one (1) of the members of the Chiropractic Peer Review Committee.

(4) [24] The chiropractic peer review shall be done according to accepted professional standards by the assigned member;

(5) The reviewing member may request that the parties furnish additional information:

1. If a request for additional information is made, the information shall be provided no later than fifteen (15) days from the request; and

2. If the information is not timely provided, a finding may be made that no decision is possible; and

(c) The reviewing member shall make written findings on the dispute no later than forty-five (45) days of an assignment.

(5) If a party disagrees with the written findings of the Chiropractic Peer Review Committee member, the party shall appeal the findings to an administrative law judge within fifteen (15) days from the filing date of the written findings.

(b) If an appeal is not filed with the Office of Workers' Claims within fifteen (15) days of the date of filing of the member's written findings, the written findings of the Chiropractic Peer Review Committee member shall be deemed final and binding as to the specific issue filed on the Form EZ and shall not constitute a legal finding for any other purpose.

Section 8. [4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 112, "Medical Dispute", (June, 2000 Edition), Department of Workers Claims; and

(b) Form 120EX, "Request for Expedited Determination of Medical Issue", (July 14, 1994 Edition), Office [Department of Workers Claims].

(2) This material may be inspected, copied, or obtained, sub-
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ject to applicable copyright law, at the Department of Workers
Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following
locations:
(a) Preventon Park, 657 [To-Be-Announced] Avenue, Frank-
fort, Kentucky 40601;
(b) 410 West Chestnut Street, Louisville, Kentucky 40202;
(c) 2203 North 8th Street, Paducah, Kentucky 42001; or
(d) 101 Summit Drive, Pikeville, Kentucky 41601

APPENDIX A
AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached
Request for Expedited Determination of Medical Issue (Form
120EX) concerns treatment for a condition compensable under the
Kentucky Workers’ Compensation Act. Affiant further states as
follows:
1. Date and time of work-related injury or date on which occupa-
tional disease was discovered:
2. Brief description of how injury occurred or how occupational
disease was acquired:
3. Date and identity of person to whom notice of injury or occupa-
tional disease was given:
4. Medical treatment at issue:
5. Attempts, if any, to obtain approval for contested treatment:

Signature:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of
(month), (year).
Notary Public:

My commission expires:

APPENDIX B
AFFIDAVIT OF PHYSICIAN
EXPEDITED MEDICAL DISPUTE

Affiant (Name), a physician whose area of specialization is
(specialization), first being duly sworn, states that the attached
Request for Expedited Determination of Medical Issue (Form
120EX) concerns a work-related injury or disease.

1. The following medical care is required: (describe proposed
medical care)
2. The current working diagnosis is as follows:
3. The proposed treatment is medically necessary because:
4. The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of workers’
compensation patent) to obtain or undertake this proposed med-
ical care within the next forty-five (45) days could lead to serious
physical or mental disability or death because:

Signature:
W.C. Medical Index No.:

Address:

STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of
(month), (year).
Notary Public:

My commission expires:

WILLIAM EMRICK, Executive Director
Office of Workers’ Claims
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 14, 2007 at 2 pm
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A
public hearing on this administrative regulation shall be held on
September 24, 2007, at 10:30 a.m. at the offices of the Office of
Workers’ Claims, Preventon Park, 657 Chamberlin Avenue, Frank-
fort, Kentucky 40601. Individuals interested in being heard at this
hearing shall notify this agency in writing by September 17, 2007,
five workdays prior to the hearing, of their intent to attend. If no
notification of intent to attend the hearing is received by that date,
the hearing may be cancelled. This hearing is open to the public.
Any person who wishes to be heard will be given an opportunity to
comment on the proposed administrative regulation. A transcript of
the public hearing will not be made unless a written request for a
transcript is made. If you do not wish to be heard at the public
hearing, you may submit written comments on the proposed ad-
ministrative regulation. Written comments shall be accepted until
October 1, 2007. Send written notification of intent to be heard at
the public hearing or written comments on the proposed admin-
istrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery
General Counsel, Office of Worker’s Claims
Preventon Park, 657 Chamberlin Avenue,
Frankfort, Kentucky 40601, phone (502) 564-5550, Ext. 4464,
fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

1. Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation assists in expediting the payment of medical ex-
 pense benefits. This administrative regulation establishes a pro-
dure for the resolution of a medical dispute before an administra-
tive law judge and chiropractic peer review committee.
(b) The necessity of this administrative regulation: KRS
342.755(1) requires that the executive director promulgate admin-
istrative regulations to expedite the payment of medical expense
benefits.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation sets forth
procedures to expedite payment of medical expense benefits.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: The procedure
for resolution of medical disputes allows physicians, carriers, and
employers a way to expedite the payment of medical benefits when
a dispute arises.
(e) 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: A section on chiropractic peer review has been added.
The order of the administrative regulation has been changed to
clarify and allow the reader to follow the procedures more easily.
There are references to 803 KAR 25.190 to clarify when these
administrative regulations may overlap. We have added language
to eliminate filings of medical disputes on the identical issue. We
have also added language concerning the burden of going forward
to clarify for all parties.
(b) The necessity of the amendment to this administrative regula-
tion: It is imperative to provide clear concise administrative
regulations for injured workers, employers, physicians and carriers.
In prior years our agency had a written policy on chiropractic peer
review, but no administrative regulation. It is important to promul-
gate the procedure for chiropractic peer review so our agency is in
compliance with statutory mandates.
(c) How the amendment conforms to the content of the author-
izing statutes: The amendments set forth the chiropractic peer
review which gives parties another option to resolve disputes. It
also clarifies issues so as to give the parties better procedures to
follow.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendments set forth the chiropractic peer
review which gives parties another option to resolve disputes. It
also clarifies issues so as to give the parties better procedures to
follow.

2. List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: All injured employees, employers, physicians who
work in Kentucky, chiropractic peer review participants, insurance
agents, insurance companies, and individual self-insured employers.

3. Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if any, 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: Parties to medical disputes already fol-
low these procedures, but the clarifications may help alleviate pro-

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cedural questions. The chiropractic peer review committee has been in place since 1995, but has never been promulgated and used adequately. Claimants would need to appeal unfavorable utilization review decisions by filing a form given to the claimant. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no new cost added to any parties. We have set $250 for chiropractic peer reviews but this cost is minimal compared to normal utilization reviews. Medical disputes should remain the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The procedures hopefully will be clarified. Parties in disputes over chiropractic treatment will have another cheaper option to resolve the dispute.

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

(a) Initially: There should be no cost to the administrative body to implement these changes. We have developed the Form EZ, but the cost for a form is minimal to this agency.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The normal budget for the Office of Workers' Claims.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by amendment: The Office of Workers' Claims has set a $250 charge for a chiropractic peer review. However, this is paid by the parties. There should be no increase in fees or funding paid to the Office of Workers' Claims.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The payment for a chiropractic peer review is $250. However, this is a cheaper alternative to the parties to resolve a dispute over chiropractic treatment.

(9) TIERING: Is tiering applied? Tiering is not applied, because these amendments apply equally to all parties.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT OF LABOR
OFFICE OF WORKERS' CLAIMS
(Amendment)

903 KAR 25:040. Average weekly wage certification.

RELATES TO: KRS 342.143
STATUTORY AUTHORITY: KRS 342.143(260)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.143 requires that the average weekly wage of the state be certified to the Executive Director of the Office of Workers' Claims [director] by the Executive Director of the Office of Employment and Training, Department for Workforce Investment [Social Insurers], Education Cabinet [for Human Resources], in a manner prescribed by the Executive Director of the Office of Workers' Claims [Workers' Compensation Board] by administrative regulation. The function of this administrative regulation is to prescribe this manner.

Section 1. Certification of Average Weekly Wage of the State. (1) On or before September 1 of each year, the Executive Director of the Office of Employment and Training in the Department for Workforce Investment [Social Insurers], Education Cabinet [for Human Resources] shall certify to the executive director the "average weekly wage of the state" for the preceding calendar year, pursuant to KRS 342.143.

(2) This certification shall include the mathematical calculation used in determining the average weekly wage in accordance with KRS 342.143.

WILLIAM P. EMRIK, Executive Director
APPROVED BY AGENCY: August 3, 2007
FILED WITH LRC: August 6, 2007 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2007, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 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 October 1, 2007. 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: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative rule or regulation requires that the average weekly wage be certified to the Executive Director of the Office of Workers' Claims.

(b) The necessity of this administrative regulation: KRS 342.143 requires an administrative regulation be in place to prescribe the manner in which the average weekly wage of Kentucky is certified.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation prescribes the manner in which the average weekly wage is certified.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments are clarifications and name changes to make this administrative regulation correct.

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

(a) How the amendment will change this existing administrative regulation: The amendments will clarify who receives the average weekly certification. It should be the executive director, not the Workers' Compensation Board. The amendments also correct the name of the cabinet from Human Resources to the Education Cabinet, Office of Employment and Training in the Department of Workforce Investment.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to correct the names of the parties responsible in this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that the executive director receive the certification of the average weekly wage and not the Workers' Compensation Board.

(d) How the amendment will assist in the effective administration of the statute: The amendments will clarify and bring the administrative regulation into compliance with the statutory authority and correct the names of agencies and cabinets.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: employers, injured individuals, attorneys practicing workers' compensation law, insurance carriers, and the Office of Workers' Claims' staff.

(4) Provide an assessment of how this rule or group of rules will impact by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No impact on any of these groups. The amendments are name corrections and clarifications.

(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.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No
Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating continuing medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1)(a) Except for emergency care, treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employer.

(b) If the employer utilizes an approved managed health care plan as defined in 805 KAR 25:110, the employee shall select a gatekeeper physician from the list provided by the employer.

(c) The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider each time that a medical service is sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a medical provider of the identity of the designated physician, who shall have the sole authority to make a referral to a treatment facility or to a specialist.

(a) The card shall bear the legend "First Designated Physician Workers' Compensation" and shall further contain the following information.

1. Name and telephone number of the first designated physician;
2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that treatment shall be performed by or on referral from the first designated physician; and
2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) The unreasonable failure of an employee to comply with the requirements of this section may suspend all benefits payable under KRS Chapter 342 until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2)(a) Within ten (10) days of a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician, including a written acceptance by the second designated physician, to the medical payment obligor, and

(b) The medical payment obligor[...which] shall issue a second card within ten (10) days from receipt of the written request indicating a change of designated physician.

(3) The card shall bear the legend "Second Designated Physi-
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clian-Workers’ Compensation” and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall be performed by or on referral from the second designated physician; and

(b) A further change of designated physician shall require the written consent of the employer, its medical payment obligor, [arbitrator] or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the “Second Designated Physician” card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5)(a) If an employee’s two (2) choices of designated physician have been exhausted, he shall not, except as required by medical emergency, make an additional selection of a physician without the written consent of the employer, its medical payment obligor, [arbitrator] or the administrative law judge.

(b) This consent shall not be unreasonably withheld.

(6) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease,

(b) The employee has received treatment with passive modalities, including electric stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days; and

2. The treatment plan shall detail the need for the passive treatment, the benefits, if any, derived from the treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended; and

2. The treatment plan shall set forth specific and measurable performance goals for the employee through the surgery, work hardening, or medical rehabilitation program.

(2)(a) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program.

(b) In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor.

(c) An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request.

(3)(a) Preparation of a treatment plan shall be a necessary part of the care to be rendered and shall be an integral part of the fee authorized in the medical fee schedule for the underlying services.

(b) An additional fee shall not be charged for the preparation of a treatment plan or progress report, except for the reasonable cost of photocopying and mailing the records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable.

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. (1) Prior to resolution of a workers’ compensation claim by opinion or order of an [arbitrator or] administrative law judge, the medical payment obligor shall notify the medical provider and employees of its denial of a specific statement for services, or payment for future services from the same provider, in writing within thirty (30) days following receipt of a completed statement for services.

(2) A copy of the denial shall be mailed to the employee, employer, and medical service provider.

(3) The denial shall:

(a) Include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers; and

(b) Be made for a good faith reason.

(4) Upon receipt of a written denial, a medical provider may tender a statement for services to another potential payment source or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an [arbitrator or] administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled during a period in which:

(a) The medical provider submitted an incomplete statement for services.

(b) The payment obligor shall promptly notify the medical provider of a deficient statement and shall request specific documentation.

2. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation;

(b) A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 342.020(4);

(c) The employee’s designated physician fails to provide a treatment plan if required by this administrative regulation; or

(d) The utilization review required by 803 KAR 25:190 is pending.

1. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review.

2. A medical fee dispute filed thereafter shall include a copy of the final utilization review decision and the supporting medical opinions.

(3) An obligation for payment or challenge shall not arise if a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. (1) If the statement for services contains charges in excess of those provided in the applicable fee schedule established in 803 KAR 25.089, 803 KAR 25.091, and 803 KAR 25.092, the medical payment obligor:

(a) Shall make payment in the scheduled amount;

(b) Shall serve a written notice of denial setting forth the reason for refusal to pay a greater amount.

(2) Following receipt of a final medical bill audit reconsideration decision pursuant to 803 KAR 25:190, the medical provider shall file within thirty (30) days a medical fee dispute in accordance with 803 KAR 25.012 to dispute the amount of payment.

Section 10. Patient Billing. (1) A medical provider may tender a statement for services to a patient once it has received:

(a) A written denial from the medical payment obligor; or

(b) An opinion by an [arbitrator or] administrative law judge finding that the services were unrelated to a work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an [arbitrator or] administrative law judge, if the medical provider has been joined as a party to a workers’ compensation claim or to a medical fee dispute and has had an opportunity to present contrary evidence.

(3) The medical provider shall not bill a patient for services which have been denied by the payment obligor for failure to submit bills following treatment within forty-five (45) days as required by KRS 342.020 and Section 6 of this administrative regulation.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If an Individual who is not a physician or medical provider provides com-
pendable services for the cure or relief of a work injury or occupational disease, including home nursing services, the individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2)(a) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring the expense.

(b) A request for payment shall be made on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 113, "Notice of Designated Physician", (August 15, 1998 Edition), Office [Department] of Workers Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (August 15, 1998 Edition), Office [Department] of Workers Claims.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., located at [the following locations]:

(a) Prevention Park, 657 Chamberlin [To Be Announced] Avenue, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 2203 North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: August 3, 2007
FILED WITH LIS: August 6, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2007, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 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 October 1, 2007. 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: Corta H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-6951.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corta H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates the selection of physicians and providers for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

(b) The necessity of this administrative regulation: The executive director must promulgate administrative regulations to expedite the payment of medical expense benefits and assist with effective administration of workers' compensation claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes. This administrative regulation sets forth the procedures to select physicians for injured workers and procedures for treatment plans which assist in effective administration of workers' compensation claims.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation effectively sets forth the procedures for selecting physicians and treatment plans.

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

(a) How the amendment will change this existing administrative regulation: The amendments are mostly clarifications to this administrative regulation. We updated a form name and improved language to clarify issues.

(b) The necessity of the amendment to this administrative regulation: It is necessary to correct and clarify this regulation to assist injured workers with selecting their physician and doing treatment plans.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the authorizing statutes by clarifying and correcting the language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify and correct the language of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured workers, carriers, employers, and physicians.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There would be no significant impact on the above groups, because these are corrections and clarifications.

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

(a) Initially: No cost to implement changes.

(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: The normal budget will be used.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because the amendments are applied equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)


RELATES TO. KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735
NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish procedures and standards for certification of workers' compensation managed health care system health care plans pursuant to KRS 342.020. The function of a managed care plan is to assure that quality medical care will be delivered to the injured employee at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

Section 1. Definitions. (1) "Executive director" is defined by KRS 342.001(10) [Commissioner] means the Commissioner of the Department of Workers' Claims.

(2) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition
that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain. "Emergency care" does not include follow-up care, except when immediate care is required to avoid serious disability or death.

(3) "Gatekeeper physician" means any qualified physician, as defined in KRS 342.0011, acting within the scope of his or her license who has been specifically designated by a managed health care system to provide primary care to a patient and to [and designated by a managed-care plan as a "gatekeeper"] empowered to make referrals of patients to other providers for specialized care or diagnostic services.

(4) "Managed health care system" means a health care network that utilizes gatekeeper physicians, performs utilization review, and does medical bill audits.

(5) "Managed care plan" means a written plan describing the operations of a managed health care system.

(6) "Provider" means any person or entity licensed, certified, or registered to provide medical services.

(7) "Revocation" means the termination of a managed health care plan certificate to provide services under the Kentucky Workers' Compensation Act prior to expiration of the certificate.

(8) "Service area" means a geographic area consisting of a county or group of counties of which no county shall be subdivided.

Section 2. Certification Process. (1)(a) All managed care plans shall be certified by the executive director [commissioner].

(b) A [Any] managed health care system may apply to have a plan or plans certified by the executive director [commissioner].

(c) Managed health care systems may operate one (1) or more plans.

(2) An application [Application] for initial certification and renewal shall be submitted, in a form acceptable to the executive director [commissioner] and shall contain the following information:

(a) System identification number;
(b) Date and state of incorporation;
(c) Name, address, and phone number of each corporate officer, and [if the person who will be the day-to-day plan administrator];
(d) Name and address of each owner of more than five percent of the stock or controlling interest in the entity;
(e) Name, address, and phone number of the medical director, who shall be a doctor of medicine (M. D.) or doctor of osteopathic medicine (D. O.) [medical doctor (M.D.) - physician] and who shall oversee and maintain compliance with the managed care plan and
(f) Name, company name, address, and phone number of the case manager who shall be qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse who shall oversee and monitor case management provisions of the managed care plan;

7. Description of the system's organizational structure;
(b) System qualifications;
1. Description and map of the system's service area;
2. Name, address, phone number, and specialty of all participating providers separated by county;
3. A list of [separately identify] those providers who shall serve as gatekeeper physicians, including [The list of available gatekeeper physicians shall include] an appropriate choice of the various [different] types of physicians described in KRS 342.0011.
4. The system shall provide assurance that all licensing, registration, or certification requirements have been met and are current for the providers to practice in Kentucky (or border states wherein the provider practices) and that each participating provider shall maintain in full force and effect a professional malpractice policy with limits of no less than $500,000 [or $250,000] for an occurrence of professional negligence.
5. [If] A copy [specimen] of the agreement that each class of medical provider shall execute to participate in the system.
6. A copy [specimen] of the materials which the system shall provide to workers setting forth the grievance procedure and
form, the requirements and restrictions of the system, the list of providers to be used by workers, and the means of accessing services and treatment within and outside of the service area.

b. The application shall detail the time and means by which the materials shall be delivered to employees and employers.

(7) A copy [specimen] of materials directed at management employees informing supervisors of the necessity of channeling injured workers to the managed care plan providers and giving immediate notice to the employer, insurance carrier, and plan of the occurrence of an injury.

Section 3. Financial Ability. (1) Each managed health care system shall demonstrate to the executive director [commissioner] that it has sufficient financial resources and professional expertise to perform all of the necessary functions of a managed health care system and managed care plan.[Each managed health care system, seeking certification, shall demonstrate such resources and ability to the commissioner by the following:]

(a) [In the event the applicant has previously provided managed care or other similar medical and administrative services in the Commonwealth of Kentucky, the applicant shall provide the following:]
1. A summary and description of the administrative and medical services provided, and
2. [Together with] A list of representative entities for which managed care related administrative or medical services have been provided;

(b) [In the event the applicant has not previously provided services related to the delivery of managed care in the Commonwealth, the executive director [commissioner] shall require, prior to certification, that the applicant post either a performance bond or cash surety deposit in an amount of $500,000 with the Office of the executive director [commissioner] (by use of Form MC-1 or MC-2) to demonstrate sufficient financial resources to provide all of the administrative and medical services required to be performed under a managed care plan;[–]

2. The bond or cash surety shall be released by the executive director [commissioner] sixty (60) days after the managed health care system demonstrates to the executive director [commissioner] that all of its arrangements for rendering workers' compensation managed care services in the Commonwealth have been terminated; and[–]

3. If a managed care system demonstrates three (3) consecutive years of good performance, the executive director may release the bond or cash surety.

(c) [If the applicant has an audited financial statement addressing any of its prior operations for the preceding year, a copy of the applicant's most recent audited financial statement shall be submitted to the executive director [commissioner].]

Section 4. Plan Qualifications. (1) A copy of the managed care plan shall be submitted, in a form with the application which shall comply with the requirements in this section [demolishes];

2. A plan shall provide assurance [1] that the system is in compliance with the requirements of the Kentucky Workers' Compensation Act and the purposes and provisions of this chapter.

(2) A plan shall provide assurance [1] that the system is in compliance with the requirements of the Kentucky Workers' Compensation Act and the purposes and provisions of this chapter.

(3) The plan shall;

(a) Offer an adequate number of health care providers including gatekeepers, specialty and sub-specialty physicians, and general and specialty hospitals to afford employees reasonable choice and convenient geographic accessibility to all categories of licensed care; and

(b) Provide a complete list of the health care providers to insured employees.

(4) The employee shall choose a gatekeeper physician when it becomes apparent that continuing care is required for an injury or disease comparable under KRS Chapter 342.

(5) Employers [2] or insurers may contract with multiple managed health care systems in order to maximize access for their employees.

(6) An employee [3] may access providers who are not participating plan providers:

(a) For emergency care as defined in Section 1 of this adminis-
trative regulation;
(b) When the employee is referred by a gatekeeper physician outside the managed care plan for medical services [by a gatekeeper physician];
(c) When authorized treatment is unavailable through the managed care plan; or
(d) To obtain a second opinion when a managed care plan physician recommends surgery.

The plan shall have mechanisms [44-Mechanisms] to ensure continuity of care upon termination of contracts between the managed health care system, the employer, and/or participating providers.

(5) The plan shall have mechanisms [6-Mechanisms] for utilization review which shall prevent inappropriate, excessive, or medically unnecessary medical services and including:
(a) Treatment standards upon which utilization review decisions shall be based (including low back symptoms and injuries to the upper extremities and knees) assuring quality care in accordance with prevailing standards in the medical community of which the plan provider is a member.

2. The standards shall conform to any practice parameters or guidelines for clinical practice adopted by the executive director [commissioner];
(b) Mechanisms requiring periodic review to determine that continued treatment of an injured employee is reasonable, appropriate, and medically necessary, and that treatment plans required by Section 12 of the administrative regulation have been timely prepared;
(c) Assurance that the managed health care system is conducted in accordance with the standards set forth in 603 KAR 25-190; and
(d) Adequate procedures for credentialing providers and evaluating the quality and cost effectiveness of services delivered under the plan.

(3) The plan shall have provisions [6-Provisions] for employer or carrier audit of the managed health care system's operations and the financial arrangements between the system and its providers.

(10) [9] A grievance procedure meeting the requirements of Section 10 of this administrative regulation shall be in the plan.

(11) The plan shall demonstrate effective [8-Effective methods of informing employees, employers, and medical providers of the services provided by the plan and requirements imposed by the plan, including a twenty-four (24) hour toll free phone number by which information may be obtained concerning plan operations, after-office-hours care, and twenty-four (24) hour access to emergency care.

(12)(a) [8] A system to provide authorization numbers to medical providers and health facilities where preauthorization or continued stay review is required by the plan.
(b) The system must be recorded in the treatment authorization code section of the appropriate billing forms.

(13)(a) The plan shall demonstrate aggressive [44-Aggressive case management by either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or a certified rehabilitation registered nurse to coordinate the delivery of health services and return to work policies; promote an appropriate, prompt return to work; and facilitate communication between the employee, employer, and health care providers.
(b) The plan shall describe the circumstances under which injured employees shall be subject to case management and the services to be provided.

(14) [111] A spreadsheet shall [notice on Form MC-2-3 to be mailed or emailed to the Office [Department] of Workers' Claims for entry into the Office's [Department's] computer database that indicates the employers who have become associated with a managed care plan which shall include:
(a) Name and address of employer or carrier;
(b) Date of enrollment; and
(c) Date of termination, if applicable.

Section 5. Plan Certification. (1) The executive director [commissioner] shall notify the applicant in writing of the determination made upon the application for certification or modification thereof, within sixty (50) days of receipt of a complete application.

(2) A certificate shall be valid for a period of two (2) years and only for the service area and managed care plan or plans specified by the executive director [commissioner].

(3) Upon written request made at least sixty (60) days prior to expiration of the current certificate, the executive director [commissioner] may renew a plan for additional successive two (2) year periods.

(4) Geographical areas may be added upon the filing of a supplemental application demonstrating the managed health care system's ability to serve the expanded area.

(5) If an application does not meet the requirements for certification or expansion, the executive director [commissioner] shall notify the applicant in writing and specify those items deemed deficient.

(6) The application is granted thirty (30) days from the date of notice of the deficiency by the executive director [commissioner] to correct deficiencies through an amended application.

(7) Certification of a managed care plan are not transferable.

(b) A new application for certification shall [must] be filed when fifty (50) percent or more of the ownership or controlling interest of a system has been transferred.

Section 6. Plan Modifications. (1) A managed health care system which either implements or experiences material variations as to any matter set forth in the original application or managed care plan shall obtain approval for the modification by filing a request for modification with the executive director [commissioner].

(2) Intended variations shall not be implemented until approved by the executive director [commissioner].

(3) A modification outside the control of the system shall be filed with the commissioner within fifteen (15) days of its occurrence.

(4) Within fifteen (15) days of entering into an agreement with an employer or insurer to provide workers' compensation managed care services, the managed health care system shall submit notification thereof to the executive director [commissioner].

(b) The notification shall identify the employer or employers with whom the managed health care system has contracted and the certified managed care plan applicable to that employer.

(c) Notification shall be deemed approved unless disapproved by the executive director [commissioner] in writing within fifteen (15) days.

(d) The system shall promptly furnish any information deemed necessary by the executive director [commissioner] to review the notice.

(e) When an employer or insurer terminates a contract with a managed health care system, the managed health care system shall file notification with the executive director [commissioner] within fifteen (15) days. Indicating the employers for whom managed care services have been terminated and the effective date of the termination.

Section 7. Suspension or Revocation of Certification. (1) The certification of a managed care plan by the executive director [commissioner] may be suspended or revoked if:

(a) Service is not being provided;
(b) The plan is not providing services or the contract with the insurer or health care provider fails to meet the requirements of KRS Chapter 342 or this administrative regulation;
(c) Any material false or misleading information is intentionally submitted to the managed health care system or participating provider to the executive director [commissioner], the employer, or the insurer;
(d) The managed health care system knowingly or negligently utilizes a health care provider whose license, registration, or certification has been suspended or revoked, or who is otherwise ineligible to provide treatment of the type rendered to an injured employee.
(2) The executive director [commissioner] may investigate the operations of certified managed health care systems at any time and the system and its providers shall cooperate in any investigation by the executive director [commissioner].

(3) [Subparagraphs (a) through (d) are deleted.]

(3) If [Should] [has determined [commissioner's belief] that grounds for termination or suspension of a managed care plan certification exist, written notice setting forth those grounds shall be mailed to the managed care system.

(b) The system is granted fifteen (15) days from the date of the notice in which to file written response.

(c) Thereafter, the executive director [commissioner] shall render a written decision by which the certification of the plan may be terminated, suspended, or conditionally continued to permit the correction of deficiencies directed.

Section 8. Appeal of Executive Director's [Commissioner's] Action. Any managed health care system may seek review in the Franklin Circuit Court within thirty (30) days of the date of the executive director [commissioner's] final decision concerning its managed care plan.

Section 9. Coverage. (1) All employees of an employer for whom a managed care plan has been approved by the executive director [commissioner] shall obtain medical services compensable under KRS Chapter 342 from the certified managed care plan of the employer with the following exceptions:

(a) [Except] For those injuries or diseases for which continuing treatment was initiated prior to the date the managed care plan for the employee was approved, the employee may continue with its current treating physician.

(b) [However.] When an employee under continuing care changes the designation of treating physician, the employee's provider choice shall be limited to providers under the certified managed care plan and medical services thereafter shall be obtained pursuant to the managed care plan.

(c) [If] If initial emergency care following a compensable injury is rendered by a medical provider outside the managed health care plan, the injured employee must notify the employer of that provider so long as the provider complies with utilization review, reporting standards, and quality assurance mechanisms prescribed by the employee's managed care plan.

(d) Reimbursement of these nonplan providers shall be at the level prescribed by applicable workers' compensation fee schedules.

Section 10. Grievance Procedure. (1) Each employer's compensation managed care plan shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the receipt of medical services.

(2) A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts.

(3) The grievance procedure shall meet the following requirements:

(a) Notice. A grievance is made when a written complaint or written request is delivered by the employee or provider to the managed health care system setting forth the nature of the complaint and remedial action requested.

(b) Time frame to file grievance. The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) Resolution. The managed health care system shall render a written decision upon a grievance within thirty (30) days of receipt by the managed health care system of the grievance.

(d) Arbitration. Managed care plans may provide for alternate means of dispute resolution including arbitration and mediation.

(2) In that event final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection.

(3) In all cases, resolution mechanisms shall be expedient and where treatment matters are at issue reflect the need for prompt resolution.

(4) (3) [Subparagraphs (a) through (d) are deleted.]

(4) (9) Record of grievance proceedings. The managed health care system shall maintain records for two (2) years of each formal grievance to include the following:

(a) A description of the grievance;

(b) The employee's name and address;

(c) Names and addresses of the health care providers relevant to the grievance;

(d) The managed health care system's and employer's name and address; and

(e) A description of the managed health care system's findings, conclusions, and disposition of the grievance.

(5) (4) Appeal. (a) Any employee or provider dissatisfied with the managed health care system's resolution of a grievance may apply for review by an administrative law judge by filing a request for resolution within thirty (30) days of the date of the system's final decision.

(b) Upon review by an administrative law judge the managing legal entity shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform to KRS Chapter 342.

Section 11. Reporting. Each managed health care system having a certified managed care plan shall submit:

(1) An annual [a report to the executive director on or before April 15 [commissioner's annual] containing the following information for the previous year:

(a) [4] Number of employees treated by the managed care plan.

(b) Number of employees and employees covered by the managed care plan.

(c) [2] Number of work-related injuries or diseases by ICD-9 code treated under the managed care plan in the preceding year.

(3) [9] Breakdown by ICD-9 codes of injuries and diseases treated.

(4) Total medical costs.

(5) Average medical cost per injured employee by type of injury.

(6) Average medical cost per diseased employee by type of disease.

(7) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs.

(8) Number of grievances filed, and summary of action taken.

(2) On or before April 15 and October 15 of each year, a copy of the provider directory of participating medical providers shall be provided to the executive director. [(6) Number of days by type of injury and disease for which an employee has been released from work]

Section 12. Treatment Plans. (1) Those sections of 803 KAR 25:095 concerning treatment plans [and use of the Form-113] shall to the extent possible, apply to managed care plans.

(2) Each managed health care system shall retain treatment plans and make them available to the employee, employer, Special Fund, Uninsured Employees' Fund, administrative law judges, or attorneys representing any of the parties, upon request.

Section 13. Provider Verification. (1) Each employer which provides medical services through a managed care plan will provide to the injured employee a written certification of workers' compensation managed care coverage as soon as practicable following notice of a compensable injury or disease requiring continuing medical services.

(2) The verification shall contain the following information:

(a) Employer name, address, and phone number;

(b) Name and telephone number of the managed health care system to be contacted; and

(c) Employee name and Social Security number.

(3) [2] Possession of such verification shall [a] not [be] construed as authorization for medical service or payment.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MC-1, and

(b) Form MC-2.

(2) This material may be inspected, copied, or obtained, sub-
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LECT to applicable copyright law, at the Office of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Forms—(1) One (1) copy of Forms MC-1, MC-2, and MC-3 is filed herewith and incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort—Prevention Park, 657 To Be Announced Avenue, Frankfort, Kentucky 40601;

(b) Louisville—South Street—The Moyor—Building—524—West Main Street, Louisville, Kentucky 40202;

(c) Lexington — 960 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah — 2908 North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville—The Justice Building, 3rd Floor, 314—318 Second Street, Pikeville, Kentucky 41501.

(3) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for the purpose]

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: August 3, 2007
FILED WITH LRC: August 8, 2007 at Noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2007, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by September 14, 2007, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and standards for certification of workers' compensation managed health care systems.

(b) The necessity of this administrative regulation: KRS 342.020(3) charges the executive director with the responsibility of approving managed health care systems pursuant to an administrative regulation drafted by the executive director.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth approval procedures and criteria for managed health care systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets forth approval procedures and requirements for managed health care systems.

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

(a) How the amendment will change this existing administrative regulation: The amendments eliminate some reporting requirements not used by the agency. The amendments provide for a mechanism to release a bond or surety posted with the initial approval. There are other formatting changes.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation has not been updated since 2001 and reporting requirements needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are within the purview of the authorizing statutes which require an administrative regulation to certify and regulate managed health care systems.

(d) How the amendment will assist in the effective administration of the statutes: The reporting requirements are clearer and more effective. There is a specific way to release bonds. The language and organization of the administrative regulation are improved by the amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Managed care systems and employers, carriers, and employees involved in those systems.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is no significant change to this administrative regulation. Managed care systems will have a better reporting procedure, but no real impact to any other parties.

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

(a) Initially: Should be no cost to implement amendments.

(b) Ongoing: Should be no cost.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement amendments.

(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.

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

(9) TIERING Is tiering applied? Tiering is not applied, because the amendments apply equally to everyone.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.035(5), 342.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Executive Director [Commissioner] of the Office [Department] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Office [Department] of Workers' Claims, and [the commissioner] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Executive Director [Commissioner] of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the executive director [commissioner] the program it has adopted to ensure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the executive director [commissioner] to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Carrier" is defined by KRS 342.001(6).

(2) "Executive director" ["Commissioner"] is defined by KRS 342.001(9).

(3) "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically

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necessary or appropriate and, therefore, payment is not recommended.

(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(5) "Preadmission" or "pre-certification" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(6) "Independent Utilization review vendor" means a person or entity approved by the executive director to perform independent reviews of initial utilization reviews.

(7) "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.


(9) [68] "Vendor" means a person or entity which implements a utilization review and [medical-bill-audit] program for purposes of offering those services to carriers.

Section 2. Medical Bill Audit Criteria and Procedure. (1) A statement for medical services shall not be disputed without reasonable grounds.

(2) [68] Each medical bill audit shall be initiated within seven (7) days of receipt to assure:

(a) Compliance with applicable fee schedules, KRS Chapter 342, and applicable administrative regulations;

(b) Accuracy of bills; and

(c) That a physician has been designated in accordance with 803 KAR 25.006.

(3) Personnel conducting a medical bill audit shall have the education, training, or experience necessary for evaluating medical bills and statements.

(4) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit shall be made by an aggrieved party within sixteen (16) days of receipt of the decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) days of receipt of a request for reconsideration.

2. The written decision shall be clearly entitled "MEDICAL BILL AUFER-RECONSIDERATION DECISION.

(5) [69] A medical bill audit or request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 3. [61] Utilization Review [and-Medical-Bill-Audit] Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The utilization program shall not be used to determine causation or whether an injury is compensable. [The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services charged for a deposition, report, or photocopy comply with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.]


(2) A vendor [carrier] shall provide to the executive director [commissioner] a written plan describing the utilization review [and medical-bill-audit] program.

(3) The executive director [commissioner] shall approve each utilization review [and-medical-bill-audit] plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(4) (3) A vendor shall submit to the executive director for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the executive director [commissioner].

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contract arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years or until December 31, 2000, whichever is later.

(a) At least ninety (90) days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the executive director [commissioner] shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 5. 4] Utilization Review [and-Medical-Bill-Audit] Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the executive director [commissioner] shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review [and-medicall-bill audit] and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25.066;

(6) [61] A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25.066;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) [69] A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) [69] An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;
2. Each instance of medical bill audit;
3. The name of the reviewer;
4. The extent of the review;
5. The conclusions of the reviewer; and
6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least three (3) years; and

(c) Be subject to audit by the executive director [commissioner], or his agent, pursuant to KRS 342.035(5)(b);

(10)(a) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer.

(b) The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that [the acute low back pain] practice parameters or guidelines for clinical practice [parameters] adopted by
the executive director [commissioner] pursuant to KRS 342.035(9) shall be incorporated in the plan as the standard for medical evaluations; and [evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS 342.035(9) shall be incorporated in a utilization review plan.

(13)(a) The name, address, phone number, e-mail address of the day-to-day administrator of the utilization review plan (b) The information provided in subsection (a) shall be updated within ten (10) days of a change of any of the provided information regarding the day to day administrator.

Section 6, [6] Independent Utilization Review Vendor. (1) A utilization review vendor approved by the executive director pursuant to Section 4 of this administrative regulation may apply for approval as an independent utilization review vendor on Form UR-5, Independent Utilization Review Vendor Application.

(2) The applicant shall provide with the application written documentation which supports compliance with the independent utilization review process and this administrative regulation.

(3) Upon receipt of an application, the Office of Workers' Claims shall:

(a) Determine if supplemental information is needed, which shall be provided within thirty (30) days of the request;

(b) Review the application; and

(c) Approve or deny application within thirty (30) days of the application unless supplemental information has been requested.

(4)(a) An independent utilization review vendor shall renew its initial application on the date that its utilization review plan is due for renewal and four (4) years thereafter; and

(b) A renewal application shall be submitted to the Office of Workers' Claims at least ninety (90) days prior to the expiration of the current approval.

(5) The total fee charged for an independent utilization review shall not exceed $500 unless justification detailing unusual and complicated circumstances for a higher fee is submitted to the Office of Workers' Claims for approval prior to billing the carrier.

(6) The carrier shall be responsible for paying the services of the independent utilization review vendor.

(7) Independent utilization review vendor shall report the following data to the Office of Workers' Claims quarterly beginning March 31, 2008, and at the end of every calendar year thereafter:

(a) Name of reviewer for each independent utilization review;

(b) Number of independent utilization reviews performed by each reviewer;

(c) Primary treatments or procedures at issue;

(d) The resolution or determination of each independent utilization review;

(e) Number of initial utilization reviews overturned and the number of initial utilization reviews upheld;

(f) The information relating to independent utilization reviews;

(g) Shall be maintained for three (3) years by the independent utilization review vendor;

(h) May be subject to audit by the executive director.

Section 7. (1) A claim shall not be subject to utilization review;

(a) Medical care or treatment is approved by the medical payment obligor.

(b) The claim is denied in good faith as noncompensable.

(2) A carrier shall not refuse payment for a medical service which has been approved through preauthorization or precertification.

Section 8. Claim Selection Criteria. (1) If a claim is accepted as compensable and medical services related to the claim are denied by the payment obligor, then the medical services [Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim] shall be subject to utilization review.

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) A carrier, in good faith, questions reasonableness or necessity of a medical treatment, procedure, or medication; [Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25.006 treatment plan is received;]

(c) The total medical costs cumulatively exceed $3000;

(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An [arbitrator- or] administrative law judge orders a review.

(2) Utilization [If applicable-utilization] review shall commence when the carrier has notice that a claims selection criterion [criteria] has been met as stated in the section.

(a) The following requirements shall apply if preauthorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee within five (5) [two (2)] working days of the initiation of the utilization review process, unless additional information is required.

2. If additional information is required, tender of a single request shall be made within two (2) additional working days.

3. The requested information shall be tendered by the medical provider within ten (10) working days.

4. The initial utilization review decision shall be rendered within five (5) [two (2)] working days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional working days.

2. The requested information shall be tendered by the medical provider within ten (10) working days.

3. The initial utilization review decision shall be rendered within two (2) working days following receipt of the requested information.

4. The form shall be signed by the reviewing medical provider which may be a handwritten signature, a copy of an original signature, or an electronic signature; and

(d) Failure to fully complete the UR-1 form may:

1. Invalidate the utilization review process; and

2. Result in a medical dispute being summarily resolved in favor of an employee.

(4)(a) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death.

(b) The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(5)(a) [4)(4)] Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

(b) The thirty (30) day period shall commence on the date of the final utilization review decision.

(c) A medical provider shall not request preauthorization for a medical procedure or treatment which has previously been denied through utilization review in the previous twelve (12) months unless documentation of a substantive change in the patient's condition is provided with the request.

(d) Each medical bill audit shall be initiated within seven (7) days of receipt to assure:

(e) Compliance with applicable fee schedules;

(f) Accuracy; and

(g) That a physician has been designated in accordance with 803 KAR 25.006.

(6) Medical bill audits shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 9. [6] Utilization Review Audits. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the utilization process.
clinical issues and services under review.

(b) A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2)(a) A physician shall issue an initial utilization review denial;

(b) A physician shall supervise utilization review personnel in making utilization review recommendations; and

(c) Utilization review personnel shall hold the license required by the jurisdiction in which they are employed.

(3) A medical provider performing a utilization review shall include with the utilization review report:

(a) A curriculam vitae or

(b) A medical qualifications index number which is assigned by executive director if the medical provider's curriculum vitae is on file with the Office of Workers' Claims.

(2) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 10.[7] Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) days from the initiation of the utilization review process; and

(b) Be completed on Form UR-1 as required in Section 8(3) of this administrative regulation, clearly entitled "UTILIZATION REVIEW NOTICE OF DENIAL" and

(c) Contains:

1. A statement of the medical reasons for denial;

2. The name, state of license and medical license number of the reviewer; and

3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 11.[8] Reconsideration. (1) This section shall apply forty-five (45) days from the effective date of this administrative regulation and shall not be utilized by applicable parties after that date.

(2)(4) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be served by an aggrieved party within fourteen (14) days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or sub specialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(3)(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or

2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION." Section 12. Independent Utilization Review. (1) This section shall become effective forty-five (45) days from the effective date of this administrative regulation and replace the Section 11 procedures.

(2) A request for independent utilization review of an initial utilization review shall be:

(a) Completed on the "Request for Independent Utilization Review" page 2 of Form UR-1 and

(b) Filed with the Office of Workers' Claims within fourteen (14) days of the date of the initial utilization review report.

(3) Independent utilization review of the initial utilization review shall be performed by an independent utilization review vendor approved pursuant to Section 6 of this administrative regulation.

(3) The independent utilization review vendor shall:

(a) Be selected on a rotating basis from the list of approved independent utilization review vendors;

(b) Not be the initial utilization review vendor;

(c) Accept the assignment for the independent review unless:

1. A conflict of interest exists;

2. Confidentiality of interest exists, or

3. Due to circumstances beyond the control of the independent utilization review vendor, an appropriate reviewer becomes unavailable.

(d) Notify the Office of Workers' Claims within twenty-four (24) hours of notice of a request for an independent utilization review of the inability to accept the request and state the reason for the inability to accept the request.

(4) The Office of Workers' Claims shall send notice of the request for the independent review to the independent utilization review vendor, carrier, and initial utilization review vendor within two (2) working days of receipt of the request for independent utilization review.

(5) The carrier or its agent shall transmit all relevant medical records to the independent utilization review vendor within five (5) working days of notification by the Office of Workers' Claims.

(6) The independent utilization review shall be conducted by a:

(a) Board eligible or certified physician in the appropriate specialty or subspecialty area of a board eligible or certified physician in the appropriate specialty or subspecialty area;

(b) Chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(7)(a) All medical records reviewed in the initial utilization review shall be reviewed and considered for the independent utilization review process; and

(b) Any additional relevant medical records may be requested and considered by the independent utilization review vendor.

(8) A written independent utilization review decision shall be rendered within ten (10) working days of receipt of the request for independent utilization review.

(9)(a) The independent utilization review vendor decision shall be completed on Form UR-2;

(b) The form shall be completed in full;

(c) The form shall have the signature of the reviewing medical provider which may be a handwritten signature, copy of an original signature, or an electronic signature; and

(d) Failure to fully complete the UR-2 form may:

1. Invalidate the utilization review process, and

2. Result in a medical dispute being summarily resolved in favor of the employee.

(10)(a) A party may appeal the independent utilization review by completing the "Request for Review by ALJ" page 2 of Form UR-2;

(b) An appeal shall be received by the Office of Workers' Claims no later than thirty (30) days from the date of the independent utilization review; and

(c) When appealing, the parties shall comply with the applicable provisions of KRS 323 KAR 25-012.

(11) If an appeal or request for reopening is not timely filed, then the independent utilization review is final and binding on the parties.
(a) The Office of Workers' Claims shall provide written notice of its decision and state the reasons for its action to the applicant or vendor; 
(b) If the applicant or vendor desires to be heard regarding the Office of Workers' Claims' actions, the applicant or vendor shall request a hearing within twenty (20) days from the date of the Office of Workers' Claims' notice of denial, suspension, or withdrawal; and 
(c) The hearing procedures shall be governed by 803 KAR 25.015,
(1) Failure to comply with the provisions of this administrative regulation may result in civil penalties pursuant to KRS 342.500(7); and
(2) Failure to perform utilization review in good faith may result in an unfair claims settlement practice investigation and possible civil penalties pursuant to KRS 342.507 and 803 KAR 25.040.

Section 14. Incorporation by Reference (1) The following material is incorporated by reference:
(a) UR-1, Utilization Review – Initial Review (August 2007 edition)
(b) UR-2, Independent Utilization Review (August 2007 edition)
(c) UR-5, Application for Independent Utilization Review Vendor (August 2007 edition).

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601.

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.
(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) days of receipt of that decision.
(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.
(c) A written decision shall be rendered within ten (10) days of receipt of a request for reconsideration. The written decision shall be clearly entitled “MEDICAL BILL AUDIT RECONSIDERATION DECISION.”
(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.030(1).

WILLIAM P. EMRIK, Executive Director
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007, at 10:30 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in this hearing shall notify this agency in writing by September 17, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 October 1, 2007. 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: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4484, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures and requirements for a utilization program and medical bill audits.
(b) The necessity of this administrative regulation: Pursuant to KRS 342.035(5), the executive director is required to promulgate an administrative regulation governing utilization review activities.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs and sets forth requirements for utilization review performed to determine the necessity and reasonableness of a medical procedure or service.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by complying with the statutory mandate of KRS 342.035(5) of regulating utilization reviews.

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

(a) How the amendment will change this existing administrative regulation: The amendments will require a specific form to be used when a utilization review is performed. The process is now a two-tier process without a possibility of a third review. We have eliminated the third tier by requiring a second review by an independent review vendor. Other amendments are cleanup and clarifications.
(b) The necessity of the amendment to this administrative regulation: It is imperative to make the utilization review process consistent, efficient, and give the procedure more credibility. By requiring the same form to be used by all utilization review vendors, pertinent information is considered. Quality should improve. The independent review will also lend more credibility to the reviews.
(c) How the amendment conforms to the content of the authorizing statutes: the amendments are designed to improve and enhance the utilization review process. The authorizing statutes give the executive director authority over the utilization review process so these amendments conform to the statutory authority.
(d) How the amendment will assist in the effective administration of the statutes: The amendments will lend more credibility and consistency to the utilization process. If one form is used in all utilization reviews, then the essential information is considered and helpful to administrative law judges. The second reconsideration being considered by a different utilization review vendor will provide significant credibility to the review process and give injured workers a second review by a different reviewer.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any injured worker who may have utilization review performed on a medical procedure or service, insurance carriers, utilization review vendors, attorneys practicing in workers' compensation area and employees of Office of Workers' Claims.
(f) 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) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anyone performing utilization reviews will have to use Form UR-1 for initial reviews and UR-2 for independent reviews. Employees will have to complete the utilization review process before going before an administrative law judge and will have to affirmatively submit the appeal sheet to appeal a utilization review decision.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Carriers and utilization review vendors may state that their costs will increase by having a utilization reviewer complete the required forms. However, our agency believes all of this information is relevant and should have been part of utilization review decisions in the current regulation. If the form is completed properly, then the utilization review decision will be of better quality and given more weight by the administrative law judge.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The utilization reviews will increase their quality and effectiveness. If we can give employees
better initial reviews and an easy appeal process, the employee can move through the system and get better service and move through review. The carriers will provide better reviews and get more weight before an administration law judge.

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

(a) Initially: We have produced the forms which are a minimal cost to our agency. Our goal is to limit further litigation by improving the quality of utilization reviews. It would be difficult to assess, because we cannot predict how many initial reviews may be appealed with the new process. However, the cost should be minor administrative costs to send appeals to the Office of Workers’ Claims and copying costs of new forms. The Office of Workers’ Claims will handle the sending of notices of independent utilization reviews by using current personnel. Office of Workers’ Claims anticipates no additional costs.

(b) On a continuing basis: None anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Workers’ Claims will use the current budget to implement amendments to this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this regulation applies equally to all claimants, insurance carriers, and utilization review vendors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Alcoholic Beverage Control
(Amendment)

804 KAR 4:410. ABC schedules and forms incorporated by reference.

RELATES TO: KRS 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applicant for licensing. This regulation incorporates by reference the schedules and forms to be used to apply for specific license types.

Section 1. In addition to the "ABC Basic" application form incorporated by reference in 804 KAR 4:400, an applicant applying for an alcoholic beverage license shall complete and submit to the Office of Alcoholic Beverage Control the schedule or form for the specific license type for which he is applying. The schedules and forms are listed below:

(1) Schedule "A" Agent’s, Solicitor’s, Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License;
(2) Schedule "B" Beer Retail Only License;
(3) Schedule "F" Food Related License;
(4) Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vender License;
(5) Schedule "L" Limited 70% Food Restaurant and Golf Course Voted Wet by Special Election License;
(6) Schedule "M" Manufacturer and Producer License;
(7) Schedule "R" Retail License;
(8) Schedule "S" Storage and Warehouse License;
(9) Schedule "S/R" Special Retail Sales, Motel, Private Club, Riverboat, and Rail & Airliner License;
(10) Schedule "T" Transporter License;
(11) Schedule "Temporary" License;
(12) Schedule "Transitional" License;
(13) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License;
(14) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License;
(15) "ABC Form 714" Beer Brand Registration; and
(16) "ABC Form 715" Distilled Spirits and Wine Brand Registration.

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

(a) "Schedule "A" Agent’s, Solicitor’s Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License", 01/01/07;
(b) "Schedule "B" Beer Retail Only License", 01/01/07;
(c) "Schedule "F" Food Related License", 01/01/07;
(d) "Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vender License", 01/01/07;
(e) "Schedule "L" Limited 70% Food Restaurant and Golf Course voted wet by special election License", 02/26/07 [01/01/07];
(f) "Schedule "M" Manufacturer and Producer License", 01/01/07;
(g) "Schedule "R" Retail License", 01/01/07;
(h) "Schedule "S" Storage and Warehouse License", 01/01/07;
(i) "Schedule "S/R" Special Retail Sale- Motel, Private Club, Riverboat, and Rail & Airliner License", 01/01/07;
(j) "Schedule "T" Transporter License", 01/01/07;
(k) "Schedule "Temporary" License", 01/01/07;
(l) "Schedule "Transitional" License", 01/01/07;
(m) "Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License", 01/01/07;
(n) "Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment, Qualified Historic Site Destination Center License", 01/01/07;
(o) "ABC Form 714 Beer Brand Registration", 01/01/07; and
(p) "ABC Form 715 Distilled Spirits and Wine Brand Registration", 01/01/07.

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

(3) The applications are also available on the office’s Web site, http://www.abc.ky.gov.

CHRISTOPHER L. LILLY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD H. CHESS, Deputy Secretary
FOR THERESA J. HILL, Secretary
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 15, 2007

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation 804 KAR 4:410 shall be held on September 24, 2007, at 10 a.m. at the Kentucky Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this office in writing by September 17, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Christopher L. Lilly, Executive Director, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher L. Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides an application form to collect information required by a person(s) or entity making application for an ABC license.

(b) The necessity of this administrative regulation: The Office of Alcoholic Beverage Control is required to promulgate administrative regulations pertaining to the application forms a person(s) or entity shall complete and submit to obtain a license. In 2007, HB138 created 2 new license types. ABC must update forms to accommodate these new license types.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations to supervise and control the use, manufacture, sale, transportation, storage, advertising and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(d) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations to supervise and control the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(e) How the amendment will change this existing administrative regulation: The 2007 Kentucky General Assembly passed House Bill 138 providing for new license types. They are under KRS 243.030(44) and 243.040(16) "qualified historic site license." And KRS 241.010(26)(b) defined as "limited restaurant" as a facility were the 70% of its gross income from the sale of food, which maintains a minimum seating capacity of 50 persons for dining, which has no open bar, requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a territory where prohibition is no longer in effect. ABC schedules L and X have been up-dated to provide for these license types.

(f) The necessity of the amendment to this administrative regulation: This amendment is filed to comply with KRS Chapter 13A and the changes made from the passage of HB 138.

(g) How the amendment will assist in the effective administration of the regulations: The amendment will provide up-dated information in ABC form schedules L and X created by the passage of HB138 effective 06/26/07.

(h) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects anyone who applies for a limited restaurant alcoholic beverage by the drink or qualified historic site license. The Office of Alcoholic Beverage Control has received approximately 12 telephone calls of interest. There are approximately 57 historical districts in the Commonwealth that may qualify under HB 138. It is unknown how many of these districts may be affected. The Office of Alcoholic Beverage Control will be the only office affected by this administrative regulation amendment.

(i) Provide an analysis of how 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: The Office of ABC is required to update forms so that applicants may apply for a license.

(j) Provide an analysis of how many forms are being updated only: As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides a form for a person or entity to use when applying for a limited restaurant alcoholic beverage by the drink or qualified historic site alcoholic beverage license passed by HB 138 effective 06/26/07. This amendment will also give clarification for all applicants and holders of ABC licenses.

(k) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: There will be minimal cost to amend and print forms.

(l) On a continuing basis: There will be minimal cost of possible enforcement and inspection activity relating to new license types.

(m) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation amendment.

(n) Provide and 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 amendment. The fees for the new license types are covered by KRS 243.030 and 243.040.

(o) State whether this administrative regulation establishes additional fees or directly or indirectly increases any fees: HB138 established the fees for the historic site license under KRS 243.030(44) and 243.040(16) and the fees for the limited restaurant alcoholic beverage by the drink license under KRS 243.000(42).

(p) TIERING: Is tiering applied? The statutory requirements are applicable to all ABC applicants for licensing and, accordingly, tiering does not apply.

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 Commonwealth of Kentucky, Office of Alcoholic Beverage Control licensing division 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 241.060, 243.360, 243.390.

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 current and future years: The effect of this administrative regulation is to be in effect. There should be minimal effects of this administrative regulation on the expenditures and revenues of the Office of Alcoholic Beverage Control or local government.

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? It is unknown what revenue will be generated from this amendment, but anticipated to be minimal. The license fees are covered under KRS 243.030 and 243.040.

6. 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 will be generated by the amendment of this regulation by the state or local governments. This request to amend the ABC forms only. The license fees are established by legislation for these license types under KRS 243.030 and 243.040.

7. How much will it cost to administer this program for the first year? The effect of this administrative regulation on the expenditures of the Office of Alcoholic Beverage Control will be minimal. The existing Trust and Agency account, KRS 243.035, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation.
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(d) How much will it cost to administer this program for subsequent years? The effect of this administrative regulation on the expenditures of the Office of Alcoholic Beverage Control will be minimal. The existing Trust and Agency account, KRS 243.035, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation.

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

Revenue (+/-):

Expenditure (-/-):

Other Explanation: There should be minimal cost to administer this program at the local government level for this year or subsequent years.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance

Division of Health Insurance Policy and Managed Care
( Amendment)


RELATES TO: KRS 304.17A-060, 304.17A-250

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)

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. KRS 304.17A-250(1) requires the Executive Director of Insurance 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 body established in accordance with KRS 304.17A-080.

(2) "Office" is defined in KRS 304.1-060(2).

(3) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders.

(a) Established by the Office 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.

(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall:

(a) Submit the 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 of each year:

(a) The office 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 pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the office shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurance issuing, delivering, or renewing a standard health benefit plan shall:

(a) Implement each modification to the standard health benefit plan prescribed by the office; 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, (0607) [0606] 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 Web site at http://lkd.dpr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007, at 9 a.m. (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2007, 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 October 1, 2007. Send written notices 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, Health Policy Specialist II, Kentucky Office of Insurance, 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 defines the standard health benefit plan and establishes procedures for modifying the standard health benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-250(1) which states that the executive director shall define one standard health benefit plan and to clarify the process for alterations, amendments, and replacements to the standard health benefit plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.2-110(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. KRS 304.17A-250(1) states that the executive director shall define one standard health benefit plan. This administrative regulation defines "The Kentucky Standard Health Benefit Plan, HIPMC-SP1" (06/07), which is incorporated by reference in this administrative regulation.
How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adds to the effectuation of the statutes by defining the standard health benefit plan pursuant to KRS 304.17A-250(1) and by establishing procedures for recommending any annual modification to the standard health benefit plan.

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 update the incorporated material to make technical changes, implement recommendations from the Health Insurance Advisory Council meetings, as authorized in KRS 304.17A-080, and comply with 2007 Ky. Acts ch. 128 sec. 3.

(b) The necessity of the amendment to this administrative regulation: 2007 Ky. Acts ch. 128 sec. 3 creates a new statute in KRS Chapter 441 which requires an insurer to be the primary payor of covered, medically necessary health care to an insured prisoner who is incarcerated in local or regional jail if health benefit plan premiums are current and the insured prisoner has not been convicted. This administrative regulation must be amended to revise an exclusion in the incorporated material that conflicts with this new statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-250(1) allows the executive director to amend the standard health benefit plan annually. KRS 304.17A-080 requires the Health Insurance Advisory Council to review and discuss the design of the standard health benefit plan. This amendment revises the material incorporated by reference in conformity with recommendations from the Health Insurance Advisory Council meetings and with 2007 Ky. Acts ch. 128 sec. 3.

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates changes brought about by the 2007 legislative session and defines one standard health benefit plan.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A change during the 2004 legislative session removed the requirement for all health insurers to offer the standard health benefit plan, therefore, KOI estimates that this administrative regulation will affect Kentucky Access and approximately five (5) Kentucky health insurers offering health benefit plans in the individual and small group market. Approximately 25,000 individuals are covered under a standard health benefit plan.

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 actors that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky Access and insurers offering the standard health benefit plan will be required to amend certificates of coverage and modify computer systems, as necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Health insurers impacted by this administrative regulation routinely amend their plans yearly to comply with changing federal or state laws and less than 25,000 individuals are covered under this type of plan, therefore a significant cost is not expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers' certificates of coverage will be in compliance with 2007 Ky. Acts ch. 128 sec. 3 and this administrative regulation.

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.

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.

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.

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.

TIERING: Is tiering applied? No. Tiering is not applied because the administrative regulation applies equally to all insurers offering the standard health benefit plan and Kentucky Access.

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 KHS 304.1-010. KRS 304.17A-250(1) requires the executive director of insurance to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets. 2007 Ky. Acts ch. 128 sec. 3 created a new coverage requirement for insurers; this amendment to a regulation will include the new provision in the Kentucky Standard Health Benefit Plan, which is incorporated by reference in 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? 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.

5. How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(c) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

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

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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care (Amendment)


RELATED TO: KRS 304.17A-505, 304.17A-535
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-555
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to [provides the required notice of the administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-555 requires the executive director to enforce and carry out the provisions of KRS 304.17A-500 to 304.17A-570 by adopting necessary administrative regulations. This administrative regulation establishes notification requirements of a managed care plan if a prescription medication is removed from its drug formulary. A [when changing the supply amount of the] prescription medication is changed, or [and when] prior authorization is added [required] for a prescription medication.

Section 1. Definitions. (1) "Drug formulary" means a list of prescription medications preferred for use by a managed care plan and dispensed through a participating pharmacy to an enrollee.
(2) "Enrollee" is defined in KRS 304.17A-500(5).
(3) "Maintenance prescription medication" means a prescription drug
(a) For which a managed care plan receives no less than 1. Three [with at least three (3) claims for a thirty (30) day supply within a [the last] four (4) month period of time; or (b) One [at least one (1) claim for a ninety (90) day supply within a [the last] six (6) month period of time], including a mail order prescription; and
(b) That [and the drug] is required for maintenance therapy as determined by the prescribing provider.
(4) "Managed care plan" is defined in KRS 304.17A-500(9).

Section 2. Notification Requirements. (1) A managed care plan shall provide advance written notice to an enrollee of the following changes:
(a) The removal of a maintenance prescription medication from its drug formulary;
(b) A change that restricts or reduces the quantity or dosage of a prescription medication supplied when a prescription is filled; or
(c) A requirement for prior authorization of a prescription medication is added.
(2) A written notification pursuant to subsection (1) of this section shall be mailed to an enrollee:
(a) At least thirty (30) but no more [less] than sixty (60) days prior to the effective date of a change as listed in subsection (1)(a), (b), or (c) of this section for an enrollee who is dispensed a prescription for the drug within six (6) months prior to the notification date; and
(b) Within thirty (30) days following the effective date of a change as listed in subsection (1)(a), (b), and (c) of this section for an enrollee who is dispensed a prescription for the drug after the notification date required by subsection 2(2)(a) of this section.
(3) A written notification pursuant to subsection (1) of this section shall include:
(a) A clear explanation of the action being taken by the managed care plan;
(b) The name and number of a contact person to answer questions; and
(c) A description of the exceptions policy to the drug formulary pursuant to [developed in compliance with] KRS 304.17A-535(4).

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
FOR TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 25, 2007
FILED WITH LRC: July 26, 2007 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007, at 9 a.m. (EDT) 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 September 17, 2007, 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 October 1, 2007. 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, Health Policy Specialist II, Kentucky Office of Insurance 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 notification requirements of a managed care plan if a prescription medication is removed from its drug formulary, the quantity or dosage limits of a prescription medication changes, or prior authorization is added for a prescription medication.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that managed care plan enrollees receive proper notice regarding the managed care plan’s prescription drug benefits.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-555 requires the Executive Director to enforce and carry out the provisions of KRS 304.17A-500 to 304.17A-570 by adopting necessary administrative regulations. This administrative regulation establishes notification requirements of a managed care plan if a plan removes a prescription medication from its drug formulary, changes the supply amount of a prescription, or adds a prior authorization requirement for a prescription medication.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation ensures that managed care plans provide proper notice regarding the managed care plan’s prescription drug benefits pursuant to KRS 304.17A-505 and 304.17A-535.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will add statutory citations to the regulations to statutory authority, and conformity with existing rules. An error in Section 2(2)(a) of the original administrative regulation, and make other changes to comply with technical requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct a drafting error in Section 2(2)(a) of the original administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-555 requires the Executive Director to enforce and carry out the provisions of KRS 304.17A-500 to 304.17A-570 by adopting necessary administrative regulations. This amendment adds references to the statutory authority and relates to sections, clarifies a definition and corrects a drafting error in the original administrative regulation.
(d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of the statute by providing additional references to statutory authority, clarifying a definition, and correcting a drafting error.
error that causes confusion in the present text of the administrative regulation.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately eight (8) health insurers licensed to offer managed care plans in Kentucky. A provision 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: Health insurers are currently required to comply with the existing administrative regulation. After the Office of Insurance (K.O.I.) became aware of the confusion caused by the drafting error in Section 2(2)(a), KOI notified health insurers of the intent of this section. KOI believes that health insurers are complying with the amendment to this administrative regulation; therefore, limited impact on health insurers offering managed care plans is expected. However, health insurers who are not complying with the intent of Section 2(2)(a) may need to revise their procedure regarding the timeframe to provide written notification to enrollees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): K.O.I. does not anticipate that health insurers will incur any additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with the administrative regulation and there will be no further confusion regarding the interpretation of Section 2(2)(a).

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

(a) Initially: K.O.I. does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: K.O.I. does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the K.O.I.

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: K.O.I. does not anticipate that the implementation of this amendment will require any additional 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 establish any fees, nor does it directly or indirectly increase any fees.

9. TIERING: Is tiering applied? No. This amendment to the administrative regulation will correct a drafting error, clarify a definition, and provide additional statutory references. The amendment will apply equally to all Kentucky licensed health insurers offering managed care plans.

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 to correct a drafting error in the original text. This clarification will not produce a significant impact to the 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(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17-565 requires the Executive Director to enforce and carry out the provisions of KRS 304.17A-500 to 304.17A-570 by adopting necessary administrative regulations. This amendment to an existing administrative regulation clarifies the timeframes for providing notification of changes to prescription drug benefits to an enrollee.

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 significant costs to administer this amendment to an existing administrative regulation for the first year. (d) How much will it cost to administer this program for subsequent years? The Office of Insurance should not incur costs to administer this administrative regulation 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 (Amendment)

810 KAR 1:027. Entries, subscriptions, and declarations.


STATUTORY AUTHORITY: KRS 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.290 grants the Authority [commission] the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, the trainer, or a person authorized to withdraw the horse by either the owner or the trainer.

(2) "Scratch" means the withdrawal of a horse [entered] from a race, after closing, by the owner, the trainer, or a person authorized to withdraw the horse by either the owner or the trainer.

(3) "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, [duly] entered in a race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse [same], may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription declaration, or scratch [All entries, subscriptions, declarations, and scratches] shall be filed with the racing secretary and shall not be effective [considered as having been made] until re-
ceived by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch [same] for a period of one (1) year. Any entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations. An entry shall be [made] by the owner, the trainer, or a licensed authorized agent of the owner or trainer.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry [Telephone-entry] shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a [new] horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.

(a) A horse shall not race] unless correctly identified to the satisfaction of the stewards as [being] a horse [fully] entered.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. Persons shall be subject to appropriate disciplinary action for incorrect identification.

(c) A horse [Horses] requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH) shall be registered with the Authority [commission] veterinarian. A horse [Horses] so registered shall remain registered, and removal shall require Authority [commission] vet

 ennann approval. After inclusion, additional notification shall not be required. A horse which is [Horses which are] not properly registered shall not be permitted to race with antbleeder medications, drugs, or substances. Registration shall be made prior to entry. The racing program shall indicate the age

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(5) Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.

(6) A horse shall not be entered in two (2) races to be run on the same day.

(7)(a) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) of which is within twenty (20) days of entry.

(c) If a horse has performed [done] the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, the horse [it] shall be permitted to start, and the correct workout shall be publicly displayed on television monitors, the tote board, and the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and shall be displayed for the duration of the day's racing.

(d) [The workouts shall be displayed on television monitors and tote board for fifteen (15) minutes prior to the first race.

(e) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that the horse [it] has been adequately trained to race [seaboard] from the starting gate.

(8) If the published conditions of the race permit, an association [accept in a turf race an entry designated "main track only."] Preference shall apply to all horses drawn into a race, regardless of whether the horses are designated as also-eligible or to run as "main track only." [Section 4. Stabling Requirement. Entries shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission-in-its- approved off-track stable list.

Section 5. Limitation as to Spouses. An entry [Entries] in a race shall not be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at the time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the [daily] licensed spouse of the suspended jockey.

Section 6. Mutual Entries. (1) No more than two (2) horses having common ties through training shall be entered in a purse race.

(2) Horses entered in the same race and owned wholly[ly] or in part by the same owner or spouse, shall be joined as a mutual entry and single betting interest, except as provided in subsection (3) [of this section].

(3) No more than two (2) horses having common ties through ownership shall be joined as a mutual entry in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse, a preference for one (1) of the horses shall be made

(4)(a) Two (2) horses having common ties through ownership or training shall not start in a purse race to the exclusion of a single entry, unless the horses have been unprogressed pursuant to subsection [of this section].

(b) In a purse race, the racing secretary may in his discretion uncouple entries having common ties through training to make two (2) separate betting interests.

(5)(4] In any thoroughbred stakes race [raees] with added money of $50,000 [$400,000] or more, permission may be granted by the racing secretary [stewards] to uncouple mutual entries of horses sharing common ties through training or ownership or both.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise disqualified to race or enter it, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall be closed at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2)(a) A maiden, starter, or claiming race shall be run if.

1. Eight (8) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any [3 other purse races shall be run if]:

1. Six (6) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) or more horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) Entries which have closed shall be completed [compiled] without delay by the racing secretary and shall be posted along
Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the Authority [commission] as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards after [1] considering the safety of the horses and riders[2] and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) A claiming race, starter race, or [and/or] maiden race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which [six (6) are more] horses representing different betting interests are entered shall be run.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry. [not later than 1 p.m. the same day]

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substituting extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(4) Entries for any split race not divided by any method provided for in an administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 11. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 12(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing. [drawn in the presence of those making the entries for the race]

(2) Post positions in split races [also] shall be determined by lot, Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination. [in the presence of those making the entries for the split race]

(3) The racing secretary shall assign pari-mutual numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn into the body of a race by lot, unless otherwise stipulated in the conditions of the race. [a new drawing shall be taken as to horses on the also-eligible list.]

(3) [The starting and post-position of horses drawn from the also-eligible list shall be determined by the sequence of horses drawn, unless otherwise stipulated in the published conditions of the race. (4)] An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) (5) Entries are closed two (2) racing days prior to the running of a race. A horse on an also-eligible list for a race on the present day that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible.

(5) Also-eligibles shall be assigned post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 13. Preferred List: Stakes. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programed in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the Authority [commission] at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding day.

Section 14. Arees. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until four hours fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutual manager, and shall cause public announcement of the scratch [same] to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason. The stewards may accept a scratch after the regular scratch time if the scratch is related to adverse track conditions or change in racing surface.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If horses representing more than ten (10) [eight (8)] betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses, down to a minimum of ten (10)
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beting interests. [Scratches down to respective minimum numbers for the races may be made.] This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched[,] or excused from starting by the stewards[,] because of a physical disability or sickness shall be placed on the Authority's [commission's] veterinarian list for nine (9) (six to six) calendar days beginning the day after the horse [it] was scratched or excused.

(5) For a period of one (1) year following the effective date of this administrative regulation, each Kentucky racing association offering thoroughbred racing shall keep records and statistics documenting the effect upon field sizes of the nine (9) day veterinarian list requirement in subsection (4) of this section.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or similar [such] publication as the Authority [commission] may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

WILLIAM STREET, Chairman
TIM LEDONNE Commissioner
LLOYD R. CROSS, Deputy secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LFC: August 14, 2007 at Noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2007, at 11 a.m., at the Secretariat Room at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by September 18, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 October 1, 2007. Please send any written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forby, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (502) 246-2040, fax (502) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: John L. Forby
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation amends 510 KAR 1:027, which governs entry of horses into thoroughbred races. The amendment makes several substantive changes to the regulation outlined below in (2)(a), and also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.
(b) The necessity of this administrative regulation: The amendments are necessary to update to industry standards the thoroughbred entries regulation and to strengthen the horse racing industry in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred entries pursuant to KRS 230.215(2) and 230.260(3), which authorize the Authority to promulgate administrative regulations governing the conditions of horse racing.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the rules regarding entries into thoroughbred races.
(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 alters the language of the regulation to conform to KRS Chapter 13A drafting requirements. More importantly, the amendment makes the following substantive changes to the regulation:
Section 3(8) "Main track only" designation. The regulation will be amended to allow the tracks the option to accept entries that have been designated "main track only" into a turf race, if the published conditions of the race permit. This will assist management in keeping the number of starters at an acceptable level after scratches have been made due to changes in racing surface.
Section 4 Stabling Requirement. This section is being deleted as obsolete. Many horses are now stabled off-grounds during racing meets and the Authority is not opposed to this practice.
Section 6(4) Uncoupling of entries. "Coupling" is the term used for the traditional practice of treating horses owned or trained by a common individual as a single "betting interest" - in other words, a bet on one of the coupled horses is automatically considered a bet on the other. The horse racing industry has been moving towards uncoupling as a means of increasing field size. This regulation is being amended to allow the racing secretary to uncouple in purse races these entries held on a common ties through training and to allow the stewards to uncouple in stakes races with added money of $50,000 or more those entries sharing common ties through training, ownership, or both. Uncoupling will increase the number of betting interests available for racing and allow more races to fill. This will offset the increase in the size of starting gates under a single trainer in recent years.
Section 16(1)(b) Scratches due to track conditions. The regulation will be amended to allow the stewards to accept a scratch after the regular scratch time if the scratch is related to adverse track conditions or a change of racing surface. This will protect horses from running on surfaces with which they are uncomfortable or that might cause injury, or that might compromise their chances in the race, adversely affecting both safety and advancing the sport.
Section 16(3) Minimum field in purse races. The regulation will be amended to increase from eight (8) to ten (10) the minimum number of horses that must remain in a purse race after all scratches for physical excuses have been made. (Horses above the minimum number of ten (10) may be scratched for no reason.) It is anticipated that this amendment will increase field sizes.
Section 16(5) Veterinarian's list. Much consideration has been given to the tracks' request (most strongly urged by Churchill Downs) to increase from the present six (6) days the amount of time a horse must remain on the vet's list after being scratched (withdrawn from the race by the trainer) due to physical disability or sickness. There exists a concern that many scratches are not legitimate, but are motivated more by a desire to withdraw at the last moment from an unattractive race rather than by legitimate concerns about a horse's health or physical condition. It is hoped that increasing from six (6) to nine (9) days the number of days from hore remains on the vet's list will discourage illegitimate scratches, since the horse is prevented from racing while it is on the vet's list. Field sizes will hopefully increase since more horses will remain in the race, but this effect might be counter-balanced by the increased number of days a scratched horse is prohibited from racing. The regulation therefore requires the tracks to document the effect on field sizes of the increase in the vet's list period. The remaining changes to the regulation simply clarify language or make explicit various rules and practices that have been traditionally followed.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow the regulation to
reflect current realities and to strengthen the horse racing industry in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment alters some of the details of the rules of entry into thoroughbred races. KRS 230.215(2) and 230.250(3) grant the Authority the power to promulgate administrative regulations governing the conditions of horse racing, which include entry procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the language of this administrative regulation, and will alter the rules of entry into thoroughbred races in some particulars, as described in (2)(a) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Among the individuals affected by this administrative regulation are the owners and trainers of horses that run in thoroughbred races. As of July 10, 2007, there are 3,465 owners, 706 owner/trainers, and 164 trainers in Kentucky. Kentucky race tracks, the horse industry and the gambling public as a whole will benefit due to increased field sizes and other effects as described in (2)(a) above.

(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 will be required to comply with the rule changes outlined in (2)(a) above, but no new specific compliance activities are required for existing administrative regulation or amendment.

(b) In the case of a change, list the costs associated with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No compliance costs will be imposed upon the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The horse racing industry and the race tracks will benefit from increased field sizes and other effects as described in (2)(a) above.

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

(a) Initially: No additional cost. The administrative regulation merely changes some of the rules of entries into thoroughbred races.

(b) On a continuing basis: No additional cost.

(c) The source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) Does the administrative regulation establish any fees or directly or indirectly increase any fees: No new fees are required by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because the regulation simply governs the rules of entry into thoroughbred races. All participants in these races compete on an equal basis.

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 will be impacted by this administrative regulation, in that it administers the rules of horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statutes or regulations are involved.

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? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support

(Amendment)

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).


STATUTORY AUTHORITY: KRS 194A.050(1) [194B.050(4)], 205.200(2), 42 U.S.C. 601 to 619 [et-seo] [EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: 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 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance. In conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations [EO 2004-726, effective July 9, 2004], reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services is required to promulgate the regulations required for the public assistance program. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 to 619 [et-seo]. This administrative regulation sets forth the standards of [line] need for and the amount of a Kentucky Transitional Assistance Program payment.

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

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 11 (46).

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in:

1. Provider,
2. Number of hours of care;
3. Number of individuals for whom care is given; or
4. Amount charged; or
(a) Change in farm cropping arrangement or type of self-employment activity.
(b) "Claimant" means the individual responsible for the repayment of an overpayment.
(c) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.
(d) "Deduction" means an amount subtracted from gross income to determine countable income.
(e) "Electronic benefit transfer (EBT)" means a computer-based electronic benefit transfer system in which an eligible household’s benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.
(f) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.
(g) "Excluded income" means income that is received but not counted in the gross income test.
(h) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.
(i) "Full-time school attendance" means a workload of at least (one):
(a) The number of hours required by the individual program for participation in:
   1. An adult basic education program;
   2. A general educational development program; or
   3. A literacy program;
(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.
(j) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.
(k) "Kentucky Transitional Assistance Program" or "KTAP" means a money payment program for a child who is deprived of parental support or care pursuant to K 22 KAR 2 006, Section 1.
(l) "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.
(m) "Lump sum income" means income that does not:
   (a) Occur on a regular basis; or
   (b) Represent accumulated monthly income received in a single sum.
(n) "Minor" means a person who is under the age of eighteen (18).
(o) "Minor 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;
   (c) Has a minor child in the applicant’s or recipient’s care.
(p) "Part-time employment" means employment of:
   (a) Less than thirty (30) hours per week;
   (b) Less than 130 hours per month; or
   (c) Not employed throughout the entire month.
(q) "Part-time school attendance" means a workload that is less than full-time school attendance.
(r) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.
(s) "Recoupment" means recovery of an overpayment of an assistance payment.
(t) "Sanctioned individual" means a person who is required to be included in the benefit group but is excluded from the benefit group due to failure to fulfill an eligibility requirement.
(u) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.
(v) "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 disabled;
   (b) 42 U.S.C. 1382e; or
   (c) 42 U.S.C. 1382.
(w) "System error" means an error resulting from a malfunction at any point in the EBT redemption process.
(x) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.
(y) "Workforce Investment Act" or "WIA" means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment.
(z) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:
(a) A dependent child;
(b) A child's parent living in the home with the dependent [needy] child who is:
   1. Eligible for K-TAP; or
   2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2 006, Section 20 (44);
(c) An eligible sibling living in the home with a dependent [needy] child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:190; or
(d) An eligible child who is:
   1. In full-time school attendance or part-time school attendance;
   2. A sixteenth (16) through eighteenth (18) years of age, or
   3. A minor parent;
   (2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsided adoption to the other members, the child shall not be included in the benefit group.
   (3) If a dependent child’s parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor’s parent applied for assistance.
   (4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2 006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:
(a) Available to the benefit group; and
(b) Owned in whole or in part by:
1. An applicant or recipient;
2. A sanctioned or penalized individual; or
3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.
(2) The total amount of resources reserved by a benefit group shall not be in excess of $2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.
(3) Excluded resources.
(a) Resources from the following individuals shall be excluded from consideration:
   1. A recipient of SSI or the state supplementation program living in the home;
   2. A child excluded from the K-TAP grant;
   3. An individual not receiving assistance but living in the home including:
      a. The stepparent;
      b. Parent or legal guardian of a minor parent;
      c. The spouse of a nonresponsible specified relative; or
      d. The spouse of a minor dependent child.
(b) The following resources shall not be included in the $2,000
resource limit;
1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;
2. Funds in an Individual retirement account, retirement or deferred compensation account during the period of unavailability;
3. An excluded income payment, pursuant to Section 5 of this administrative regulation;
4. Principal and accrued interest of an Irrevocable trust during a period of unavailability;
5. Prepaid burial funds;
6. Cash surrender value of all burial insurance policies per family member;
7. Principal of a verified loan;
8. Up to $12,000 to Aleutians and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;
10. Earned income tax credit payment in the month of receipt and the following month;
11. A payment received from the Radiation Exposure Compensation Trust Fund;
12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;
13. Up to a total of $5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section;
14. A payment received from the National Tobacco Growers Settlement Trust; and
15. A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201.

(4) Disposition of resources.
(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.
(b) The household's application shall be denied, or assistance discontinued if:
1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and
2. The amount of the transfer, when added to total resources, exceeds the resource limit.
(c) The time period of eligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.
1. If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month.
2. The period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.
(5) Lifetime care agreement.
(a) The existence of a valid agreement between the applicant or recipient and another Individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.
(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.
(c) Resources held jointly by more than one (1) person.
1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.
2. If the other owner receives SSI, the balance shall be divided evenly by the number of owners and the K-TAP applicant or recipient's share shall be considered available.
(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.
(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.
(6) A resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.
(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:
1. A written statement regarding ownership, who may deposit and withdraw;
2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and
3. Verification that the applicant's or recipient's name has been removed from the resource.
(f) To be considered an [the] exempt resource, the individual development account shall have been:
1. Established on or after May 1, 1997; and
2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.
(g) A qualified purpose to establish an individual development account shall be for:
1. Postsecondary educational expense that shall include:
   a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;
   b. Fees, books, supplies and equipment required for a course of instruction at an eligible educational institution; and
   c. An eligible educational institution that shall be:
      (i) Institution pursuant to 20 U.S.C. 1088(a)(1) or 1141(a); or
      (ii) Area vocational education school pursuant to 20 U.S.C. 2471(4)(C) or (D);
2. First home purchase that includes:
   a. Costs of acquiring, constructing, or reconstructing a residence; and
   b. Usual or reasonable settlement, financing, or other closing costs;
3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:
   a. Include capital, plant, equipment, working capital, and inventory expenses;
   b. Be approved by a financial institution; and
   c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. Assistance of an experienced entrepreneurial advisor may be required, or
4. Other purpose allowed by a federal regulation or clarification.
(h) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.
(i) To be considered an exempt resource, an individual development account shall be matched by funds from a:
1. Nonprofit organization; or
2. State or local government agency, funding permitted, acting in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for K-TAP, the following shall apply:
(1) Gross income test.
(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:
1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state supplementation pursuant to 521 KAR 2:015;
3. Income of a sanctioned or penalized individual; and
4. An amount deemed available from:
   a. The parent of a minor parent living in the home with the benefit group;
   b. A stepparent living in the home;
   c. The spouse of a minor dependent child living in the home; or
   d. An alien's sponsor and sponsor's spouse if living with the sponsor;
(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and
(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible;
(2) Benefit calculation:
(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;
(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of the administrative regulation, the benefit group shall be ineligible; and
(3) Ineligibility periods:
(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;
(b) The ineligibility period shall be:
1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size, and
2. Effective with the month of receipt of the nonrecurrent lump sum amount; and
(c) The ineligibility period shall be recalculated if:
1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;
2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;
3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;
4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or
5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:
(a) By the:
1. Benefit group;
2. Sanctioned or penalized individual;
3. Natural parent;
4. Spouse of a dependent child;
5. Parent of a minor parent living in the home with the benefit group; and
6. Stepparent living in the home; and
(b) Pursuant to subsections (2) to (5) of this section.
(2) Gross income test. An Income listed in this subsection shall be excluded.
(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;
(b) A deduction applicable to an alien sponsor's income, pursuant to Section 8 of this administrative regulation;
(c) A deduction applicable to self-employment income;
(d) The difference between the standard of need and the payment maximum for the benefit group, pursuant to Section 9 of this administrative regulation, if a member of the benefit group receives a WIA stipend;
(e) Value of United States Department of Agriculture program benefits including:
1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
5. The monthly food stamp allotment;
(f) Reimbursement for transportation in performance of an employment duty, if identifiable;
(g) The value of Kentucky Works supportive services payment pursuant to 221 KAR 2:017;
(h) Nonemergency medical transportation payment;
(i) Payment from a cooperative program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;
(j) Educational grant, loan, scholarship, and work study income, including:
1. Payment obtained and used under a condition that precludes the recipient's use for current living costs; and
2. An education grant or loan to an undergraduate made or insured under a program administered by:
   a. The United States Commissioner of Education; or
   b. The Bureau of Indian Affairs;
   (k) Highway relocation assistance;
   (l) Urban renewal assistance;
   (m) Federal disaster assistance and state disaster grant;
   (n) Home produce utilized for household consumption;
   (o) Housing subsidy received from federal, state or local government;
   (p) Funds [Receipt] distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
   (q) Funds distributed per capita or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
   (r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as [volunteer serving under a program pursuant to 42 U.S.C. 6001-6011, included] a
      1. [Foster-grandparent];
      2. [Senior health aide]; or
      3. [Senior companion]; or
      4. [Member of the:]
         a. Service Corps of Retired Executives; or
         b. Active Corps of Executives;
   (s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5024 [Volunteers in Service to America (VISTA) participant pursuant to 42 U.S.C. 1461] if less than the minimum wage under state or federal law, whichever is greater including: [ ]
      1. Volunteers in Service to America (VISTA);
      2. Foster Grandparents;
      3. Retired and Senior Volunteer Program; or
      4. Senior Companion;
      (t) Payment from the cabinet for:
         1. Child foster care; or
         2. Adult foster care;
      (u) Energy assistance payment made under:
         1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
         2. Other energy assistance payment made to an energy provider or provided in-kind;
         (v) The first fifty (50) dollars of child support payment;
         (w) Earnings of an individual attending school who is age nineteen (19) or under;
         (x) Earnings of a dependent child under eighteen (18) who is a high school graduate;
         (y) Nonrecurrent monetary gifts totaling thirty (30) dollars or less per month per individual;
         (z) The principal of a verified loan;
         (aa) Up to $12,000 to Aleuts and $20,000 to an Individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
         (bb) Income of an Individual receiving SSI, including monthly SSI benefits and any retroactive SSI benefits;
         (cc) The essential person's portion of the SSI check;
2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and
3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and
4. For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:
   1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and
   2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:
   (a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or
   (b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:
      1. The benefit group has been directly affected by a natural disaster;
      2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period;
      (c) Any cash grant received by the recipient under Kentucky Works shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 921 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:
   (a) A stepparent;
   (b) The spouse of a minor dependent child;
   (c) The spouse of a specified relative other than a parent;
   (d) A parent of a minor parent. [A parent barred from receiving assistance due to failure to meet-assistance status; or]

(e)(2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:
   (a) The first ninety (90) dollars of the gross earned income; and
   (b) An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:
      a. The support of the individual; and
      b. A person living in the home if:
         (i) The needs of the person are not included in the K-TAP eligibility determination;
      (e) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual; and
      2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or
      3. Payment for alimony or child support to a person not living in the home by the individual [if an SSI recipient who is listed in subsection (1) of this section; or
      5. A retroactive SSI payment, that is counted in determining eligibility and the amount of payment to the K-TAP unit in the

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Section 8. Alien Sponsor Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (9) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien shall be ineligible for a month in that adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation.

a. The sponsor; and

b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. An amount paid by the sponsor to nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a nonhousehold member; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources deemed available to the sponsor shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less $1,500.

(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.

(b) The sponsor's obligation shall be available until the:

1. Immigrant:

a. Becomes a United States citizen;

b. Is credited with forty (40) quarters of work; or

c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or

2. Sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)(a) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent.

(b) An alien shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or

2. Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or

2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The K-TAP payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

<table>
<thead>
<tr>
<th>Number of Eligible Persons</th>
<th>Payment Maximum</th>
<th>Standard of Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$186</td>
<td>$401</td>
</tr>
<tr>
<td>2 persons</td>
<td>$225</td>
<td>$460</td>
</tr>
<tr>
<td>3 persons</td>
<td>$262</td>
<td>$526</td>
</tr>
<tr>
<td>4 persons</td>
<td>$328</td>
<td>$592</td>
</tr>
<tr>
<td>5 persons</td>
<td>$383</td>
<td>$668</td>
</tr>
<tr>
<td>6 persons</td>
<td>$432</td>
<td>$724</td>
</tr>
<tr>
<td>7 or more persons</td>
<td>$482</td>
<td>$790</td>
</tr>
</tbody>
</table>

(b) The gross income limit shall be as follows for the appropriate family size:

<table>
<thead>
<tr>
<th>Number of Eligible Persons</th>
<th>Maximum Gross Income Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Person</td>
<td>$742</td>
</tr>
<tr>
<td>2 Persons</td>
<td>$851</td>
</tr>
<tr>
<td>3 Persons</td>
<td>$974</td>
</tr>
<tr>
<td>4 Persons</td>
<td>$1096</td>
</tr>
<tr>
<td>5 Persons</td>
<td>$1218</td>
</tr>
<tr>
<td>6 Persons</td>
<td>$1340</td>
</tr>
<tr>
<td>7 or more Persons</td>
<td>$1462</td>
</tr>
</tbody>
</table>

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.
(2) The following method shall be used to calculate a best estimate:
   (a) For a case with earned income, other than self-employment
       earned income, a monthly amount shall be determined as follows:
       1. Cents shall:
          a. Not be rounded to the nearest dollar before adding or multi-
             plying hourly or daily earnings; and
          b. Be rounded to the nearest dollar before adding or multiplying
             weekly, biweekly, semimonthly, monthly, quarterly, or annual
             amounts.
       2. Unless it does not represent the ongoing situation, income
          from all pay periods in the preceding two (2) calendar months shall
          be used.
       3. A monthly amount shall be determined by:
          a. Adding gross income from each pay period;
          b. Dividing by the total number of pay periods considered;
          c. Converting the pay period figure to a monthly figure by multi-
             plying as:
             (i) Weekly amount by four and one-third (4 1/3);
             (ii) Biweekly amount by two and one-sixth (2 1/6); or
             (iii) Semimonthly amount by two (2); and
          d. Rounding to the nearest dollar.
   4. If income has recently begun and the applicant or recipient
      has not received two (2) calendar months of earned income, the
      anticipated monthly income shall be computed by:
      a. Multiplying the hourly rate by the estimated number of hours
         to be worked in a pay period; or
      b. (i) Multiplying the daily rate by the estimated number of days
          to be worked in the pay period; and
          (ii) Converting the resulting pay period figure to a monthly
               amount pursuant to subparagraph 3c of this paragraph and
               rounding to the nearest dollar;
      b. For a case with unearned income, other than unearned
         self-employment income, a monthly amount shall be determined by:
         1. Rounding cents to the nearest dollar;
         2. Using the gross monthly amount of continuing, stable un-
            earned income received on a monthly basis; and
         3. Averaging the amount of unearned (nontaxable) unearned
            income received in the three (3) prior calendar months, unless it
            does not represent the ongoing situation; and
      (c) For a case with self-employment income, a monthly amount
          shall be determined as follows:
          1. If the self-employment enterprise has been in operation for
             at least a year, the income shall be prorated by dividing the income
             from the last calendar year by twelve (12);
          2. If the self-employment enterprise has been in operation for
             less than a year, the income shall be prorated by dividing by the
             number of months the business has been in existence; and
          3. Profits shall be determined by:
             a. Rounding the total gross income to the nearest dollar;
             b. Rounding the total amount of allowable expenses to the
                nearest dollar;
             c. Dividing each by twelve (12), or the appropriate number of
                months, and rounding to the nearest dollar; and
             d. Subtracting the rounded monthly expenses from the rounded
                monthly income.
      (d) The best estimate shall be recalculated.
      (e) At six (6) month intervals for a case with:
          1. Earmarked or unearned income other than self-employment; or
          2. Income from a self-employment enterprise that has not been
             in existence for at least one (1) year;
          (b) At twelve (12) month intervals for a case with a self-
              employment enterprise that has been in existence for at least one
              (1) year;
          (c) If the agency becomes aware of a change in a circum-
              stance; or
          (d) To reflect a mass change in the standard of need or pay-
              ment maximum standard pursuant to Section 9 of this adminis-
              trative regulation.

Section 11. K-TAP Recoupment. The following provisions shall
apply for recoupment of a K-TAP overpayment.
(1) Necessary action will be taken promptly to correct and re-
    coup an overpayment.
(2) An overpayment shall be recouped:
   (a) From an adult claimant, whether or not currently receiving
       K-TAP benefits:
       1. After notice and an opportunity for a fair hearing pursuant to
          921 KAR 2:055 is given;
       2. After administrative and judicial remedies have been ex-
          hausted or abandoned; and
       3. Including assistance paid:
          a. Pending the hearing decision; or
          b. Due to cabinet error.
   (b) Through:
      1. Repayment by the claimant to the cabinet;
      2. Reduction of future K-TAP benefits, that shall result in the
         benefit group retaining, for the payment month, family income and
         liquid resources of not less than ninety (90) percent of the amount
         of assistance paid to a like size family with no income pursuant to
         Section 9 of this administrative regulation; or
      3. Civil action in the court of appropriate jurisdiction; or
      4. If the cabinet becomes aware of expunged electronic bene-
         fits transfer (EBT) payments, the overpayment balance shall be
         reduced by an amount equal to the expunged benefits.
   (3) In a case that has both an overpayment and an underpay-
       ment, the overpayment and underpayment shall be offset one
       against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment.
(1) The cabinet shall recoup an Aid to Families with Depen-
    dant Children overpayment discovered on or after July 1, 1982,
pursuant to 45 C.F.R. 333.20(a)(13).
(2) An Aid to Families with Dependent Children overpayment shall
be recovered from an adult or child member of the benefit group:
   (a) Pursuant to 45 C.F.R. 333.20(a)(13); and
   (b) In accordance with the recoupment process specified in
       Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient
may voluntarily:
   (a) Return a benefit payment; or
   (b) Give permission to the cabinet to use EBT benefits by
       completing and returning a written statement requesting the
       written statement requesting this option [check] to avoid an overpayment if
      the:
      1. Case is totally ineligible for the month the payment [check] is
         issued; and
      2. Has not been reduced for recoupment of a previous over-
         payment.
   (2) If a payment [check] is voluntarily returned, the cabinet
      shall:
      (a) Determine whether or not the recipient is due a refund as
          described in Section 14 of this administrative regulation; and
      (b) Complete a PA-30.2, [Payment] Receipt For Returned
          Benefits [ ] to verify for the K-TAP recipient the payment [ ]
          has been returned.

Section 14. Refund. A recipient shall be due a refund in the
following situations:
(1) An amount in excess of the actual overpayment is re-
    ouped,
(2) An overpayment and an underpayment is offset and a bal-
    ance is owed to the recipient; and
(3) A K-TAP payment [check] that is voluntarily returned to
    avoid an overpayment is compared to the current month obligation
    of child support collected by the cabinet during the month the K-
    TAP check was intended to cover, leaving a balance owed to the
    recipient.

Section 15. Correction of Underpayments. The following provi-
sions shall apply to a K-TAP payment:
   (1) An underpayment shall be promptly corrected to:
      (a) A current K-TAP recipient; and
      (b) One (1) who would be a current recipient if the error caus-
          ing the underpayment had not occurred;
(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group;

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in the:
   (a) Month the payment is paid; or
   (b) Next following month.


(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 A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 15, 2007
FILED WITH LRC: August 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall take place on December 20, 2007 at 9 a.m. in the Cafeteria Meeting Room of the first floor of the EOB Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2007, 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 October 1, 2007. 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: Justin DeArntger
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility criteria and establish the benefit amount to those individuals who are eligible.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 601-619.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the effective regulation of the K-TAP program in accordance with KRS 205.200(2), 205.210(1) and 42 U.S.C. 601-619.
   (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 change the language that gives an income exclusion to ineligible alien parents of K-TAP recipients. This administrative regulation is also being amended to allow voluntary recovery of overpayments from the EBT account. Additionally, this administrative regulation will allow the recovery of overpayments from expunged benefits, if a

claim exists.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to change the language that gives an income exclusion to ineligible alien parents of K-TAP recipients. This administrative regulation is necessary to allow voluntary recovery of overpayments from the EBT account. Additionally, this administrative regulation is necessary to recover overpayments from expunged benefits, if a claim exists.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this regulation comply with KRS 205.211 allowing the secretary to correct any underpayments or overpayment of K-TAP benefits. The amendments also comply with KRS 205.200(2), prescribing the manner in which the benefits will be issued.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will allow the cabinet to correct overpayments of K-TAP benefits in accordance with KRS 205.211. Additionally, it assists caseworkers in properly determining financial eligibility for individuals applying for assistance pursuant to KRS 205.200(2).

(2) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: This administrative regulation will affect individuals who are receiving assistance from K-TAP. As of May 2007, there were 24,324 families receiving K-TAP assistance.

(3) 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: Ineligible aliens will receive the income allowance and cabinet intended to apply. K-TAP recipients who have received benefits have the opportunity to voluntarily return benefits applied to the EBT account. Expunged K-TAP benefits will be applied to any existing claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation to the administrative regulation will not cost K-TAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ineligible aliens will receive the same deductions as other cases where parents are statutorily excluded based on federal policy. The policy to the administrative regulation will allow K-TAP recipients the ability to voluntarily request recovery of overpayments from EBT account and apply expunged benefits towards existing claims.

(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 being 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 man-
date. 42 U.S.C. 601 to 619
2. State compliance standards KRS 194.050(1), 205.200(2), 205.210(1), 205.211, 205.201
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the mandate.
4. Will this administrative regulation impose stricter requirements, or additional and 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), KRS 205.200(2), 42 U.S.C. 601 to 619.
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? The K-TAP 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? The K-TAP program has been operational since October 1996. This amendment will not require any additional cost in the first year.
   (d) How much will it cost to administer this program for subsequent years? The K-TAP 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 Explanations:

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

921 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619 [et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: 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 205.220 prescribes who is eligible for public assistance. The Cabinet for Health and Family Services shall, under the provisions of KRS Chapter 205, administer the assistance programs of Kentucky Transitional Assistance Program and Kentucky Works in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations, and a state funded program of a money payment to a person who is aged, blind and has a disability who is disadvantaged by the implementation of the Supplemental Security Income (SSI) Program. In addition, KRS 205.245 provides for a money payment to a person who is aged, blind or has a disability. The Cabinet for Health and Family Services shall make a payment pursuant to 921 KAR 2:015, for a person with mental illness or mental retardation. This administrative regulation sets forth the time and the manner in which a payment is made.

   (a) A payment may be issued monthly: 1. By [Monthly-by] check; [or]
   2. Electronic benefit transfer (EBT); or
   3. Deposited directly into a recipient's checking account upon completion by the recipient of the Direct Deposit Authorization, Form PA-63; and
   (b) A payment shall be issued prospectively.
   (2) Initial payment.
   (a) A Kentucky Transitional Assistance Program approval shall not be made for a period prior to the date of application.
   (b) The effective date of an initial payment for a Kentucky Transitional Assistance Program approval shall be the date an application is filed if eligibility factors are met as of that date.
   (c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.
   (3) Subsequent and special payment.
   (a) Except in a situation pursuant to paragraph [paragraph] (b) [1, (c), and (d)] of this subsection, a subsequent Kentucky Transitional Assistance Program payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.
   (b) [A subsequent Kentucky Transitional Assistance Program payment shall not be made to an individual for a month in which the amount of the benefit payment, prior to a recoupment, would be less than ten ($10) dollars.
   (c) An otherwise eligible individual shall be deemed a recipient of Kentucky Transitional Assistance Program for another purpose if a Kentucky Transitional Assistance Program check is not received pursuant to paragraph (b) of this subsection.
   (d) A special payment shall be issued:
   1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and
   2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.
   (4) Ineligibility of payment.
   (a) A Kentucky Transitional Assistance Program payment is unconditional and is exempt from a remedy for the collection of a debt, lien or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.
   (b) The Cabinet for Health and Family Services may institute recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.
   (c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditible, out-of-balance settlement condition that occurs during the redemption process as a result of a system error as defined in 921 KAR 2:016.
   (5) EBT Account Inactivity.
   (a) If an EBT account has not been debited in 365 days, the cabinet shall:
   1. Expunge a monthly benefit on a monthly basis as each indi-
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2. Notify the household in writing:
   a. That the household’s EBT account has not been debited in the last 365 days; and
   b. Of the amount of EBT benefits that have been expended. (b)
If a recipient debits the EBT account, the enforcement process shall cease.

(6) (6) Eligible payee.
   (a) A money payment shall usually be issued in the name of the eligible applicant.
   (b) A protective payment may be made to a third party payee if
   1. A determination has been made by the Cabinet for Health and Family Services that poor money management is contributing to the unsuitability of the home for a needy child;
   2. The payee has refused, without good cause, pursuant to 924 KAR 2:006 and 921 KAR 2:370, to participate in the Kentucky Works Program or the Child Support Program, or
   3. A minor teenage parent has not complied pursuant to 921 KAR 2:006, Section 18. The protective payment to a third party payee shall be for the eligible child of the minor teenage parent.
   (c) The Department for Community Based Services may request an accounting from a third-party payee in which the use of Kentucky Transitional Assistance Program funds shall be described pursuant to PA-148, Protective Payee Agreement.
   (d) A Kentucky Transitional Assistance Program payment for the month of death may be reassigned to the:
      1. Widow or widower;
      2. Parent;
      3. Guardian;
      4. Executor or administrator of the estate.
   (e) If the payment is reassigned to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(7) (66) A Kentucky Transitional Assistance Program payment [check] may not be issued to an eligible Kentucky Transitional Assistance Program recipient who is a wage supplementation participant pursuant to 921 KAR 2:370, Section 2(2)(c)(11). The amount of the eligible Kentucky Transitional Assistance Program payment for the benefit group containing a wage supplementation participant may be diverted to the contracted employer of the wage supplementation participant.

Section 2. Supportive Services for Kentucky Works Participants. A supportive services payment for a Kentucky Works participant shall be made according to the type of service provided, as follows:

1. A child care payment shall be issued pursuant to 922 KAR 2:160.
2. Transportation.
   (a) A transportation payment shall be made prospectively for an anticipated transportation cost.
   (b) A transportation payment pursuant to 921 KAR 2:017 may be made directly to the Kentucky Transitional Assistance Program recipient.
   (3) Other approved supportive services payments shall be made:
      (a) Directly to the provider; and
      (b) Within thirty (30) days of receipt of appropriate verification of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of a State Supplementation Payment.

1. Method of payment.
   (a) A payment shall be issued monthly;
      1. By check; or
      2. Deposited directly into a recipient’s checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and
   (b) A payment shall be issued prospectively.

2. Intial payment.
   (a) The effective date for State Supplementation Program approval shall be the first day of the month in which:
      1. An application is filed; and
      2. Eligibility factors are met.
MARK A. WASHINGTON, Commissioner
TOM EMBERTON, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY: August 15, 2007

FILED WITH LRC: August 15, 2007 at 11 a.m.

PUBLIC HEARING PUBLIC AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2007, 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 October 1, 2007. Send written notification of intent to attend the public hearing or 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: Justin Deanger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time and manner in which a payment is made to Kentucky Transitional Assistance Program (K-TAP) recipients, Kentucky Works Program (KWP) participants for supportive services, and State Supplementation program recipients.

(b) The necessity of this administrative regulation: This administrative regulation is needed to set forth the time and manner in which payments are issued.

(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 205.220 requires the Cabinet for Health and Family Services to prescribe by administrative regulation who is eligible for public assistance, in conformity with federal statutes and regulations. This administrative regulation conforms to the content of the authorizing statutes by establishing the time at which the Kentucky Temporary Assistance Program (K-TAP), Kentucky Works supportive services, and State Supplementation payments are made, and the methods in which payments are distributed. The Kentucky Works Program is the work program under K-TAP. The KWP is an 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 administrative regulation sets forth these standards in conformity with the Title IV-A and the 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 time and manner requirements for supplementation and public assistance grant payments, including supportive services payments.

(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 allow an Electronic Benefit Transfer (EBT) as an additional method of payment distribution for K-TAP and Kinship Care. Benefit payments of less than $10 will be issued to K-TAP and Kinship Care recipients regardless of the distribution method. An electronic benefit transfer eliminates the cost associated with issuing a monthly paper check. The amendment allows the expungement of benefits if not utilized after 12 months. Additionally, the amendment also adds direct deposit as a method of distributing State Supplementation payments.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include an electronic benefits transfer (EBT) as a method of distributing public assistance payments to K-TAP and Kinship Care recipients. The amendment also adds direct deposit as a method of distributing the State Supplementation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-619 and KRS 205.245 by clarifying the time and manner of public assistance, supportive services, and supplementary payments.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.220(1) requires the cabinet to prescribe by administrative regulation who is eligible for public assistance. The usage of EBT will change the manner in which K-TAP and Kinship Care payments are distributed. Direct deposit is an alternative to the manner in which the State Supplementation payment may be issued.

(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 (which includes KWP participants), Kinship Care, and State Supplementation programs. As of May 2007, there were 24,324 families receiving K-TAP, 5,176 families receiving Kinship Care, and 4,479 State Supplementation 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 to the administrative regulation will allow K-TAP, Kinship Care, and State Supplementation recipients a faster and more efficient means of access to program benefits. The amendment to the administrative regulation will not affect supportive services payments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) The amendment to the administrative regulation will not impose a cost to state supplementation recipients. The amendment to the administrative regulation will not impose a cost to K-TAP and Kinship Care recipients unless the recipient withdraws from the account more than once per month. A recipient may withdrawal cash at the time of a purchase without charge. An 85 cent charge will be applied to the EBT account for all cash withdrawals at an ATM or POS machine, if over 1 per month. Additionally, the bank may charge a surcharge for cash withdrawals at an ATM or POS machine.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The amendment to the administrative regulation will allow K-TAP and Kinship Care recipients a faster and more efficient means of access to program benefits. The amendment to the administrative regulation will not affect supportive services payments.

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

(a) Initially: The cost is based on how many free withdrawals are allowed. The cabinet has chosen the option to provide K-TAP and Kinship Care recipients one free withdrawal per month. The amendment to the administrative regulation will be cost-neutral after factoring in savings from reduced staff time (central office and field staff) and the printing and mailing of re-issued checks.

(b) On a continuing basis: The cost is based on how many free withdrawals are allowed. The cabinet has chosen the option to provide K-TAP and Kinship Care recipients one free withdrawal per month. The amendment to the administrative regulation will be cost-neutral after factoring in savings from reduced staff time (central office and field staff) and the printing and mailing of re-issued checks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds for the State Supplementation program and Title IV-A and state general funds used to meet Maintenance of Effort requirements for K-TAP and Kinship Care, 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. An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish fees. This administrative regulation amendment directly or indirectly establish fees for cash purchases, cash back with purchases, and cash withdrawals at an ATM or POS machine (one per month). The bank may charge a surcharge for cash withdrawals at an ATM or POS machine. Recipients are instructed to look for a sign near the machine that tells you the surcharge amount. Fees are avoidable.

(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
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 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), 205.220, 205.245, 42 U.S.C. 601 to 619.
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. No effect 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? The K-TAP and Kinship Care program has been operational since October 1996 and does not directly generate any revenue. The State Supplementation program has been operational since December 1973 and does not 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? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. 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 1:300. Standards for residential child-caring facilities.


STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 198.645[-616.060]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to establish administrative regulations necessary to receive programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) and 199.645 require the cabinet to receive the cabinet for Health and Family Services) to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for residential child-caring facilities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2), [means the Cabinet for Health and Family Services.]
(2) "Child" is defined by [at KRS 199.011(4),] 600.020(8), and may include:
(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with 610.110(6) or 620.14(1)(b) or;
(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.
(3) "Child-caring facility" is defined by [at KRS 199.011(6).]
(4) "Child-caring program" means the method of delivering a child-caring service.
(5) "Community resources" means a service or activity available in the community that supplements those provided by the child-caring facility in the child's treatment or management of a child.
(6) "Crisis intervention unit" means a unit operated to serve a child in need of short term intensive treatment and to avoid risk of placement to a higher level of care.
(7) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.
(8) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.
(9) "Family residential treatment program" means an intensive professional assessment and treatment-oriented service provided by a residential treatment facility to a family unit in order to prevent out of home placement, or to facilitate family reunification.
(10) "Group home" is defined by [at KRS 199.011(10).]
(11) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.
(12) "Latching device" means an Instrument used to secure a seclusion room door that does not require the use of a key or combination.
(13) "Physical management" means techniques used by a specially-trained staff member for the purpose of restricting a child’s freedom of movement in order to maintain a safe environment for the child and others.
(14) "Qualified mental health professional" is defined by KRS 600.020(47).
(15) "Qualified mental retardation professional" is defined by
KRS 2028.010(12).
(16) [44] "Residential child-caring facility" means an institution or any home providing twenty-four (24) hour care.
(17) [46] "Residential treatment program" means an intensive professional treatment-oriented service provided by a residential facility.
(18) [46] "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.
(19) [47] "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving [h] emotional conflict or behavioral disorder.
(20) [48] "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.
(21) [49] "Treatment team" means a representative group of people who provide services to the child and the child's family.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a residential child-caring facility shall be in compliance with 922 KAR 1:305 for a child-caring facility.

(2) A residential child-caring facility shall meet the requirements of 922 KAR 1:300, Sections 3 through 7.

Section 3. Residential Child-caring Facility Services. (1) The child-caring program services for a residential child-caring facility shall be in compliance with 922 KAR 1:300, Section 7.

(2) Unless a child is a member of a family group placed in a facility, a child under six (6) shall not be placed in the residential child-caring facility unless that facility is also licensed to provide emergency shelter services as established in 922 KAR 1:300.

(3) An exception to subsection (2) of this section may be made for a child age three (3) to six (6), if:

(a) For a child who is in the custody of the cabinet, the commissioner or designee and the residential child-caring facility agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs; or

(b) For a child who is not in the custody of the cabinet, a qualified mental health professional or qualified mental retardation professional and the child's custodian agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs.

(b) The residential child-caring facility provides:

1. Adequate space for the child that is protected from children who are age ten (10) and older;
2. Sight and sound segregation of the child from children who are age ten (10) and older while the child engages in:
   a. Sleeping;
   b. Personal hygiene; and
   c. Toilet; and
3. Staff supervision that supports the child's ITP.

Section 4. Residential Treatment Program. The following additional requirements shall apply to a residential child-caring facility providing intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c) After assessment and development of the ITP in accordance with 922 KAR 1:300, Section 7, the treatment team shall identify services to meet the needs of the child and his family.

2. The services shall:

(a) Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional, and

(b) [shall] Include, as developmentally appropriate, a minimum of weekly:
   a. [4] Individual counseling from a social worker or other treatment professional; and
   b. [2] Group counseling conducted by a trained social worker or other treatment professional as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;
2. Specialized therapy recognized by a mental health credentialing authority; or
3. Family counseling.

(e) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization before October 2004 or within two (2) years of initial issuance of a license for treatment.

(2) Staffing requirement.

(a) The child-caring facility shall maintain a staff-to-child ratio of at least one (1):

b. Child care staff member to six (6) children during the child's waking hours;
and

b. Child care staff member for every twelve (12) children in a living unit during nonwaking hours.

2. At least one (1) staff member in each living unit shall remain awake during children's sleeping hours.

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and
2. Have at least five (5) years experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for:

a. Supervision;

b. Evaluation, and

(c) Certification of the:

(i) Treatment program;

(ii) Social work, and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his duties are spent supervising the treatment program.

2. If an employee serves as both executive director and treatment director, the higher staff qualification shall apply.

(3) Seclusion.

(a) When seclusion is used, a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;

2. Provide a copy of the policy and procedures to staff members responsible for placement of a child into seclusion; and

3. Require a staff member who uses seclusion as part of the forty (40) hour annual training program established in 922 KAR 1:300, Section 3, to complete at least sixteen (16) hours of training in approved methods of de-escalation and the use of seclusion;

4. Use seclusion only in an emergency or crisis situation when:

a. A child is in danger of harming himself or another; and

b. The effort made to de-escalate the child's behavior prior to placement was ineffective;

5. Prohibit the use of seclusion.
used for:
(1) [x] Punishment;
(2) [x] Discipline; or
(3) [ ] Consequence of staff error.

6. Provide that (a) Approval from the treatment director or treatment staff designee as established in 922 KAR 1:300, Section 3, [shall be] obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion.

7. Place no more than one (1) child [shall not be placed] into the same seclusion room at a time; [x]

8. Remove (if) an object that may be used for self-harm (shall be removed) from a [the] child before the child [the] is placed in seclusion.; [x]

9. Not remove a child's clothing, except for belt and shoes, while the child is placed in seclusion;

10. (a) Except for a belt and shoes, a child's clothing shall not be removed while he is placed in seclusion.

(ii) Within a twenty-four (24) hour period of time, not to allow a child to remain in a locked seclusion for more than:

(a) the maximum amount of time that a child remains in a locked seclusion shall not exceed the following:

1. Age nine (9) and younger, fifteen (15) minutes if the child is age nine (9) and younger; and

2. Age ten (10) and older, one (1) hour, if the child is age (10) and older.

(b) If a child's behavior is stabilized, release the child [the] child shall be released] from seclusion prior to the time period specified in this section.; [x]

12. Discontinue seclusion if a child displays adverse side effects, including:

(a) Illness;

(b) Severe emotional or physical stress; or

(c) Physical damage to self or others in seclusion;

13. Provide a child in seclusion with food, water, and access to a lavatory, and

14. Use a room for seclusion that is:

(a) Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility;

(b) Immediately observable if the door is closed;

(c) At least fifty-six (56) square feet in size; and

(d) Free from any object that allows the child to do self-harm.

(b) [x] If a child requires repeated placement in seclusion, a treatment team meeting shall be conducted by the treatment director to reassess the child's ITP, including referring the child to a higher level of care.

(c) [x] A staff member shall observe visually a child who is in seclusion every five (5) minutes.

(d) Staff shall have visual contact with a child in a locked seclusion at all times.

(e) [x] Seclusion shall be discontinued if a child displays adverse side effects, including:

1. Illness;

2. Severe emotional or physical stress; or

3. Physical damage;

4. A child in seclusion shall be provided with food, water, and access to a lavatory.

(e) Staff shall document, in the child's record, the following information regarding seclusion of a child:

1. An intervention to de-escalate the child's behavior prior to placement;

2. Date and time of placement;

3. Date and time of removal;

4. Reason for placement;

5. Name of each staff member involved;

6. Treatment director's or designee's approval;

7. Five (5) minute visual observation by staff of the child's placement; and

8. Intervention provided by treatment staff when the child leaves seclusion.

(f) [x] A room used for seclusion shall be:

1. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility;

2. Immediately observable if the door is closed;

3. At least fifty-six (56) square feet in size; and

4. Free from any object that allows the child to do self-harm.

(a) Immediately upon the child's exit from seclusion, treatment staff shall provide therapeutic intervention.

(b) Onset of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child's placement in seclusion, designated treatment staff shall complete an incident report that shall:

1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;

2. Document an assessment by the treatment director or designee that shall include consideration of the:

(a) Necessity of the physical management or seclusion;

(b) Consonance of the physical management or seclusion with the residential child-care facility's policy and procedures, and

(c) Need for a corrective action;

3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident and

4. Be signed by the treatment director or designee and the program director or designee.

(b) The residential child-placing agency shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occur, including seclusion, an incident report shall be:

1. Completed by designated treatment staff;

2. Reviewed no later than one (1) working day after its use; and

3. Signed by the treatment director or designee and the program director or designee.

(i) Staff shall have visual contact with a child in a locked seclusion at all times.

Section 5. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the child upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

(a) Four (4) children during normal waking hours; and

(b) Six (6) children during normal sleeping hours.

2. Administrative oversight of the program shall be provided by a staff member who shall be a: a. Treatment director; or

b. Person qualified to be executive director.

(b) A licensed psychiatrist shall be available to evaluate, provide treatment, and [to] participate in the treatment planning.

(c) Intake and service.

1. Upon admission, the crisis intervention program shall provide the child and his parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and his parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of timeout; and

b. An explanation of behavior management techniques to a child and his parent, guardian, or other legal representative.

(3) The crisis intervention [stabilization] unit shall prohibit the use of:

(a) Seclusion; or

(b) Physical management [Mechanical restraint].

Section 6. [Family Residential Treatment Program. The following additional requirements shall apply to one (1) pilot family resid-
dential child-caring facility under special circumstances. Clarification and enhancements provided in the amendment preserve the safety, permanency, and well being of all children served through residential child-caring facilities.

(d) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by clarifying standards of care and service for residential child-caring facilities and making allowances for younger and older children’s placement within a residential child-caring facility under circumstances to preserve the safety, permanency, and well being of these children.

(e) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes through the modification of the standards of care and service for residential child-caring facilities to preserve the safety, permanency, and well being of children placed. The amendment also makes technical corrections to ensure compliance with KRS Chapter 13A.

(f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2007, there were 72 licensed residential child-caring facilities within Kentucky.

(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: A residential child-caring facility may be impacted by the change if it is an amendment.

(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 new cost to residential child-caring facilities projected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will maintain the safety, permanency, and overall well being of children served by residential child-caring facilities.

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

(a) Initially: There will be no new initial cost to the administrative body to implement this amendment.

(b) On a continuing basis: There will be no new continuing cost to the administrative body to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet implements and enforces this administrative regulation through the use of Title IV-E and 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: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any fees and does not directly or indirectly increase any fees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 670-679b
2. State compliance standards: KRS 194A 050(1), 199.640(5), 199.645
3. Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 670-679b
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose a stricter, additional or different requirement or responsibility from the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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 and the Department of Juvenile Justice 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), 199.640(5), 199.645, 42 U.S.C. 670-679b
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? Yes
   (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? Yes

   (c) How much will it cost to administer this program for the first year? There are no new initial costs to administer this program.

   (d) How much will it cost to administer this program for subsequent years? There are no new ongoing costs to administer this program.

   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:
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(New Administrative Regulation)

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal.

RELATES TO: KRS 132.020, 132.200
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the coal industry.

Section 1. Definitions. (1) "Manufacturing machinery" means machinery actually engaged in manufacturing that is subject to the state ad valorem tax of fifteen (15) cents upon each $100 of value provided in KRS 132.020(1) and exempt under KRS 132.200(4) from ad valorem taxation by any county, city, school or other taxing district in which it has a taxable situs.
(2) "Processing area" means the area of a coal preparation plant or coal load out facility where operational steps and methods are used to wash, size, blend, crush, load, or chemically treat to get a final marketable product.

Section 2. Machinery Actually Engaged In Extraction, Severance, Dredging Or Mining Of Coal. Machinery used in the extraction, severance, dredging or mining of coal is not manufacturing machinery for purposes of KRS Chapter 132.

Section 3. Machinery Actually Used In Mining Or Similar Operation That Is Engaged In Manufacturing. (1) Machinery actually used in the crushing, sizing, blending, chemical treating and washing of coal is manufacturing machinery.
(2) Coal manufacturing begins when machinery and equipment is used to convey the raw coal into the crushing, sizing, blending and washing facilities and includes machines and equipment moving the coal between the manufacturing processes within the processing area including (in process staging).
(3) Machinery and equipment used to blend different product grades, prior to the point of the coal being loaded on transport for removal from the processing area, is manufacturing machinery.
(4) Manufacturing ends with the loading of coal for final transport to the end user.
(a) The loading of coal for final transport to the end user is only manufacturing if blending or chemical treatment occurs during the loading process.
(5) Machinery actually used in crushing, sizing, blending and washing includes structures housing the crushing, sizing, blending or washing machinery.
(6) Machinery whose purpose is to move, stage or load the coal when it is utilized subsequent to receiving or dumpering of the coal into one of these processes and prior to completion of the sizing, crushing, blending or washing process is manufacturing machinery.

Section 4. Equipment Used In Mining Or Similar Operation That Is Not Engaged In Manufacturing. (1) The manufacturing process excludes coal hauled via licensed truck outside the processing area.
(2) No other machinery actually used in extraction, severance, dredging or mining operations is manufacturing machinery regardless of where in the operation it is located.

Robert M. Burnside, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2007 at 11 a.m. in Training Room A, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: James B. Livers, Assistant Director, Division of State Valuation, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 32, Frankfort, Kentucky 40620, phone 502-564-5807, fax 502-564-8132.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: James B. Livers, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the coal industry.
(b) The necessity of this administrative regulation. This administrative regulation is necessary to help discern what is machinery actually engaged in manufacturing as it pertains to the coal industry.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify what is machinery actually engaged in manufacturing as it pertains to the coal industry.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all of the coal companies who are required to file property taxes with the Department of Revenue. In addition, state and local governments are affected in regards to revenue.
(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 Department of Revenue will have to make return revisions to the personal property tax return and instructions. Local governments will not be impacted. Affected taxpayers will have to follow the changes in filing tax returns.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3)? There will be no additional cost to any of the entities.  
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The DOR and taxpayers will benefit from the clarification of what property qualifies as manufacturing machinery. Also, affected taxpayers will receive the benefit of a tax decrease. There is no benefit to local governments.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Initially, it will not cost the Department of Revenue additional monies to implement this administrative regulation.
(b) On a continuing basis: On a continuing basis, it will not cost the Department of Revenue additional monies to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional source of funding will be necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. Tiering was not used because all of those affected by this regulation are being treated equally.

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 Revenue, Office of Property Valuation and local taxing jurisdictions revenue receipts will be impacted by this administrative regulation.

3. Identify each state or federal statute that requires or authorizes the action taken by the administrative regulation. The following state statutes authorize the action taken by the administrative regulation: KRS 13A.010, 13A.100, 131.100(1), 132.020.

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 in effect. This regulation will not affect expenditures. State general fund revenues will be reduced by approximately $500,000 annually and local property tax revenues from this source will be reduced by approximately $1.4 million annually.

(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? This regulation will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? There will be no cost involved.

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:
person noted below.

CONTACT PERSON: James B. Livers, Assistant Director, Office of Property Valuation, Division of State Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 30, Frankfort, Kentucky 40620, 502-564-5807 (phone) 502-564-8192 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James B. Livers, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the stone, sand and gravel industries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify what is machinery actually engaged in manufacturing as it pertains to the stone, sand and gravel industries.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify what is machinery actually engaged in manufacturing as it pertains to the stone, sand and gravel industries.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all of the stone, sand and gravel companies who are required to file property taxes with the Department of Revenue. In addition, state and local governments are affected in regards to revenue.

(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 Department of Revenue will have to make return revisions to the personal property tax return and instructions. Local governments will not be impacted. Affected taxpayers will have to follow the changes in filing tax returns.

(b) In complying with this administrative regulation or amendment, how much will cost each of the entities identified in question (3). There will be no additional cost to any of the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DOR and taxpayers will benefit from the clarification of what property qualifies as manufacturing machinery. Also, affected taxpayers will receive the benefit of a tax decrease. There is no benefit to local governments.

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

(a) Initially: Initially, it will not cost the Department of Revenue additional monies to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, it will not cost the Department of Revenue additional monies to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional source of funding will be necessary to implement and enforce this administrative regulation.

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

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

TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. Tiering was not used because all of those affected by this regulation are being treated equally.

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 Revenue, Office of Property Valuation and local taxing jurisdictions revenue receipts 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. The following state statutes authorize the action taken by the administrative regulation: KRS 13A.010, 13A.100, 131.130(1), 132.020.

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 regulation will not affect expenditures. State general fund receipts will be reduced by approximately $75,000 annually and local taxes will be reduced by approximately $200,000 annually.

(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? This regulation will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? There will be no cost involved.

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:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(New Administrative Regulation)

103 KAR 8:150, Ad valorem taxation of machinery actually used in the manufacturing of hot mix asphalt.

RELATES TO: KRS 132.020, 132.200
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the hot mix asphalt industry.

Section 1. Machinery Actually Engaged In Manufacturing. For purposes of this regulation, KRS 132.020(1) and 132.400(4), "mas-
chinery actually engaged in manufacturing" includes the following:

1. Machinery and equipment actually used to load raw materials into an asphalt plant's cold feed bins, including the cold feed bins; the blending of aggregates; the movement of material across screen decks into dryers or drums, including the dryer and drums; and surge facilities, silos and load control systems.

2. Machinery and equipment actually used to transport or convey the material through or between the cold feed bins, the screen decks, the dryer or drum, the surge facilities, silos and load control systems.

3. Machinery and equipment actually used to heat, dry, mix and blend the aggregates with the liquid asphalt, including all necessary housing, electrical, controls, liquid asphalt tanks and energy supply systems, or

4. Machinery and equipment actually used to load, adhes, remix, place and compact the hot mix asphalt.

Section 2. Manufacturing of Hot Mix Asphalt. (1) Manufacturing of hot mix asphalt commences with the loading of raw materials to the cold feed bins.

(2) Manufacturing continues with the blending of aggregates on the conveyor belts, through the flow of material across the screen decks, and into the dryer or drum for further blending or mixing.

(3) Manufacturing continues through the surge facilities, silos, and load control systems.

(4) Manufacturing of hot mix asphalt ends when either the hot mix asphalt is loaded for delivery to a retail customer or when the hot mix asphalt is placed and compacted as directed by the customer and when it meets the requirements set forth by the applicable customer or regulatory specifications.

(a) The loading of hot asphalt for final transport to the end user is only manufacturing if blending occurs during the loading process.

ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: August 14, 2007
FILED WITH LFC: August 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2007 at 10 a.m. in Training Room A, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 be heard on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: James B Livers, Assistant Director, Division of State Valuation, Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Fourth Floor, Station 30, Frankfort, Kentucky 40620, phone 502-564-5807, fax 502-564-5192.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the hot mix asphalt industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify what is machinery actually engaged in manufacturing as it relates to the hot mix asphalt industry.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify what is machinery actually engaged in manufacturing as it relates to the hot mix asphalt industry.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all of the hot mix asphalt companies who are required to file property taxes with the Department of Revenue. In addition, state and local governments are affected in regards to revenue.

(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 Department of Revenue will have to make return revisions to the personal property tax return and instructions. Local governments will not be impacted. Affected taxpayers will have to file changes in filing tax returns.

(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 any of the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DOF and taxpayers will benefit from the clarification of what property qualifies as manufacturing machinery. Also, affected taxpayers will receive the benefit of a tax decrease. There is no benefit to local governments.

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

(a) Initially: Initially, it will not cost the Department of Revenue additional money to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, it will not cost the Department of Revenue additional money to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional source of funding will be necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. Tiering was not used because all of those affected by this regulation are being treated equally.

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 Revenue, Office of Property Valuation and local taxing jurisdictions revenue receipts 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. The following state statutes authorize the action taken by the administrative regulation: KRS 13A.010, 13A.100, 131.130(1), 132.020.

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 in effect. This regulation will not affect expenditures. State and local property tax revenues will have a small reduction in receipts as a result of this regulation. The exact amount is not known but it is not considered material.

(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? This regulation will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? There will be no cost involved.

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

Revenues (+/-):

Expenditures (+/-):

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Tax Increment Financing
(New Administrative Regulation)

103 KAR 50:020. Application for state participation in tax increment financing projects.

RELATES TO: KRS 65.7045, KRS 65.7073, KRS 65.7075 and KRS 65.7083

STATUTORY AUTHORITY: KRS 65.7071(2)(a)(3)(b); KRS 65.7071(2)(b)

NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7071(2)(b) provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs. This administrative regulation sets forth the required application process by which a city, county or agency may seek state participation of tax increment financing in a project.

Section 1. Definitions. (1) "Agency" has the same meaning as in KRS 65.7045(2).

(2) "City" has the same meaning as in KRS 65.7045(7).

(3) "Commonwealth" has the same meaning as in KRS 65.7045(10).

(4) "County" has the same meaning as in KRS 65.7045(11).

(5) "Office" has the same meaning as in KRS 65.7045(29).

(6) "Project" has the same meaning as in KRS 65.7045(33).

Section 2. Application Process. A city, county or agency may submit an application to the office requesting that the Commonwealth participate in a project. The city, county, or agency shall file an original and one copy of the appropriate application form for the program requested and all required attachments.

Section 3. Application Forms. (1) A city, county or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues shall file "Application for the Commonwealth Participation Program for State Real Property Tax Revenues" with all required attachments and information.

(2) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program prior to January 1, 2008 shall file "Application for the Signature Project Program - 2007" with all required attachments and information.

(3) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program on or after January 1, 2008 shall file "Application for the Signature Project Program" with all required attachments and information.

(4) A city, county, or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for Redevelopment in Blighted Urban Areas Program shall file "Application for the Commonwealth Participation Program for State Redevelopment in Blighted Urban Areas" with all required attachments and information.

Section 4. Written Determination. The office shall provide its written determination required by KRS 65.7071(2)(a)(2) to the applicant based upon:

(1) The applicant's satisfaction of the applicable statutory requirements of KRS 65.7041 through 65.7083;

(2) The application submitted to the office under Section 2 of this administrative regulation;

(3) Written and oral communications with the applicant;

(4) Independent analysis of the office based upon publicly available information; and

(5) If applicable, the findings of the independent consultant's report required by KRS 65.7071.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for the Signature Project Program - 2007", (07/07)

(b) "Application for the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues", (07/07)

(c) "Application for the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas", (07/07)

(d) "Application for the Signature Project Program", (07/07)

(2) A copy of these documents may be inspected, copied, or obtained subject to applicable copyright law from the Office of Tax Increment Financing, Department of Revenue, 200 Fair Oaks Lane, from 8 a.m. to 4:30 p.m., Monday through Friday.

MIKE BURNSIDE, Secretary
APPROVED BY AGENCY: July 27, 2007
FILED WITH LRC: July 31, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on September 28, 2007 at 8:30 a.m. in the Office of Legal Services Conference Room, Third Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 165-B, Frankfort, Kentucky 40601, phone (502) 564-6240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does. KRS 65.7071(2)(b) provides that standards and requirements for the tax increment financing application process shall be established by the office through the promulgation of administrative regulations in accordance with KRS Chapter 13A. This regulation also sets forth the additional standards and requirements for the application proc-
Mixed Use Redevelopment in Blighted Urban Areas or Signature Project Program if a project grant agreement was not executed prior to January 1, 2008 will be paid by the applicant.

(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 neither establishes any fees nor directly or indirectly increases any fees not already provided for by statute.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this regulation apply to all applicants seeking state participation in a project.

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? State Commission of Tax Increment Financing and Office of Tax Increment Financing, Division of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This regulation is authorized by KRS 65.7071(2)(b), which provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state’s tax increment financing participation programs.

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 in effect. None

- 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

- 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

- How much will it cost to administer this program for the first year? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

- How much will it cost to administer this program for subsequent years? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.

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

FINANCE AND ADMINISTRATION CABINET
State Tax Increment Financing Commission
(New Administrative Regulation)

103 KAR 50:040. General Administration.

RELATES TO: KRS 65.7041-KRS 65.7083
STATUTORY AUTHORITY: KRS 65.7069(8)
NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7069(8) authorizes the State Tax Increment Financing Commission to promulgate any regulations necessary for the administration of the statutes relating to tax increment financing, specifically KRS 65.7069 – 65.7081. These statutes clarify various criteria that a project must satisfy in order to obtain state participation through a
project grant agreement.

Section 1. Definitions. (1) "Capital investment" has the same meaning as in KRS 65.7045(6).
(2) "Commission" has the same meaning as in KRS 65.7045(9).
(3) "Commonwealth" has the same meaning as in KRS 65.7045(10).
(4) "Commonwealth participation programs" means the programs described in KRS 65.7073, 65.7075, and 65.7077.
(5) "Footprint" has the same meaning as in KRS 65.7045(18).
(6) "Incremental revenues" has the same meaning as in KRS 65.7045(21).

(7) Minimum capital investment means the capital investment requirement established for the Commonwealth participation programs.
(8) "Project" has the same meaning as in KRS 65.7045(33).
(9) "Project grant agreement" has the same meaning as in KRS 65.7045(34).
(10) "Purely private development" means a project that does not include either approved public infrastructure costs or approved signature project costs as an integral component of the project.

Section 2. Criteria For Determining A Project Footprint. The commission is required by the provisions of KRS 65.7073(6), 65.7075 (5), and 65.7077(8) to determine the footprint of each project it approves for incentives. The project footprint is the area within which the minimum capital investment required for the Commonwealth participation programs must be made. The project footprint is also the area within which incremental revenues may be recovered from the Commonwealth.

(1) Minimum Capital Investment. For an area to be included as part of the project footprint, actual capital investment shall be made in the area. Each proposed project shall meet minimum investment requirements to qualify for state participation. In determining the footprint of a proposed project, the commission shall consider the footprint and source of capital investment throughout the proposed footprint and the related nature of proposed capital investments to ensure that:
1. Unrelated projects are not combined into one footprint to meet minimum investment requirements, and
2. Purely private development is not combined with independent, purely public infrastructure development that would have likely occurred without incentives for the purpose of creating a source of recovery for the private development.

(b) In making this determination of a discrete footprint, the commission shall consider whether:
1. The proposed capital investments and areas included in the proposed footprint have a common thematic linkage, other than general economic development, between or among the discrete investments in capital investment that have been centrally managed or coordinated to result in a unified economic impact; and
2. The project, taken in its entirety would not be feasible or complete without any of the discrete items of capital investment that are aggregated as part of the proposed footprint.

(2) Incremental Revenues. For revenues to be included as incremental revenues, the taxable activity shall occur within the project footprint, and the new revenues shall be reasonably and directly related to the capital investments made. The purpose of tax increment financing is to allow for the pledge of revenues generated through capital improvements to support the development of those capital improvements. Therefore, in pledging Incremental Revenues, the commission shall consider whether proposed capital improvements will reasonably result in increased revenues, and shall pledge only those incremental revenues that it determines are reasonably generated as a result of the proposed capital investment. When determining whether a capital investment in an existing structure rises to the level of significance for the entire structure to be included in increment calculations, the Commission shall consider any or all of the following guidelines:
(a) If improvements to an existing structure fundamentally and profoundly rehabilitate or otherwise re-establish the existing structure as a viable source of economic activity, then the so-affected portions of the existing structure where the capital investments occurred may be considered;
(b) If the improvements to an existing structure are isolated to a discrete floor, wing, room, or any other meaningful portion of an existing structure, then only the affected or renovated partition or partitions may be considered for purposes of inclusion in the incremental revenue calculations; and
(c) If improvements to an existing structure are limited to sidewalks, street lights, parking expansions, landscaping, or any other improvements to the exterior of an existing structure, then immediate proximity to these improvements shall not be sufficient to include taxable activity taking place within an existing structure in incremental revenue calculations for the project. These capital improvements may, however, be counted toward the capital investment of the project.

Section 2. Land Preparation. (1) "Land preparation, including demolition and clearance work," as that term is used in KRS 65.7045(3)(a), means the costs attributable to preparing the public infrastructure portion of the footprint for development, and does not include land acquisition costs.
(2) "Land preparation, demolition and clearance," as that term is used in KRS 65.7077(2), means the costs attributable to preparing the footprint, other than the public infrastructure portion of the footprint, for development and does not include land acquisition costs.

MIKE BURNSIDE, Chair
APPROVED BY AGENCY: July 27, 2007
FILED WITH LRC: July 31, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed new administrative regulation shall be held on September 28, 2007 at 10:30 a.m. in the Office of Legal Services Conference Room, Third Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides additional guidance on certain terms used in KRS 65.7045.
(b) The necessity of this administrative regulation: This administrative regulation is necessary for the administration of the statutes relating to tax increment financing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 65.7059(b) by providing guidance needed to administer the tax increment financing statutes.
(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 providing additional guidance and clarification to terms.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative
regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants and future participants in state programs for tax increment financing will be 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. Applicants will have to take no additional steps beyond those already required by the statute in order to comply with this administrative regulation, as this regulation merely clarifies what certain terms mean.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No additional costs will be required beyond that already required by the statute.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities, since they understand the meaning of certain terms, will be able to better comply with the statutory requirements and improve their ability to demonstrate that they are eligible for state participation. Depending on the size of the project and the amount of state participation, the benefits may be substantial.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: It is not anticipated that this administrative regulation will necessitate any additional costs.
(b) On a continuing basis: See above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding will come from the Office of Tax Increment Financing's 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 to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering is not being used, as the items of clarification in this administrative regulation apply to all participants and applicants in a state participation program.

FINANCIAL REPORTS AND 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? State Commission of Tax Increment Financing and Office of Tax Increment Financing, Division of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This regulation is authorized by KRS 65.7071(2)(b), which provides that the Office of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs.
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? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.
(d) How much will it cost to administer this program for subsequent years? No significant increase in cost in addition to costs already incurred by these entities in processing and reviewing applications for state participation, as required by KRS 65.7045, 65.7073, 65.7075 and 65.7083.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)


RELATES TO: KRS 61.637, 26 U.S.C. Section 401(a), 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

STATUTORY AUTHORITY: KRS 61.645(9)(g) 
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation concerns the KRS 61.637 if a member returns to employment with a Kentucky Retirement Systems participating employer after retirement, whether in a Kentucky Retirement Systems Covered position or a noncovered position. This administrative regulation is intended to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. Section 401(a), and comply with the provisions of 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Bona fide separation from service" means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement between the participating employer and the member at the time of retirement to return to work for the participating employer after retirement in any capacity, including an agreement to return as a leased employee.
(2) "Covered Position" means a position that is required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.
(3) "Noncovered Position" means a position that is not required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.
(4) "Normal retirement age" means:
(a) Age sixty-five (65) for a nonhazardous member as defined in KRS 61.510(18), and 78.510(18); or
(b) Age fifty-five (55) for a hazardous member as defined in KRS 16.65(15).

Section 2. Requirements for Commencing a Retirement Benefit. (1) For purposes of commencing a retirement benefit, a member shall terminate employment with the participating employer and shall have a Bona Fide Separation from Service, except as provided in Section 3. A prearranged agreement to be reemployed as a leased employee or as an independent contractor will be evalu-
atod by the Kentucky Retirement Systems to determine if there is a continuing employment relationship.

(2) In order to implement this administrative regulation, the retiring member and the member's last employer shall certify at the time of application for a retirement benefit that there is no prearranged agreement to reemploy the retiring member. The member and the member's last employer shall complete and file at the retirement office the Form 6751, Member and Employer Certification Regarding Reemployment. The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with the same employer from which the member retired or with any employer that participates in the retirement system from which the member retired. The retirement office shall not process a monthly retirement allowance until the member has filed the Form 6751, Member and Employer Certification Regarding Reemployment, at the retirement office.

Section 3. The Same Employer for Purposes of KERS and SPRS. (1) For purposes of applying KRS 61.637, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

Section 4. The Same Employer for Purposes of CERS. (1) For purposes of applying KRS 61.637, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

Section 5. Returning to Work with the Same Participating Employer. (1) Returning to work in a covered position in the same retirement system without a break in service or a bona fide separation from service, except as provided in Section 9, and returns to work with the same participating employer in a covered position in the same retirement system, the member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(2) Returning to work in a covered position in a different retirement system.

(a) If the member does not have a bona fide separation from service, except as provided in Section 9, and returns to work with the same participating employer in a covered position in a different retirement system, the member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(b) If a member does have a bona fide separation from service (unless such a bona fide separation from service is not required under subsection one (this administrative regulation) and returns to work with the same participating employer in a covered position in a different retirement system and if the member does not have a one (1) calendar month break in service, the member's benefit shall be suspended for the first month of the member's reemployment. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the month.

(3) Returning to work in a noncovered position. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, and returns to work with the same participating employer, in a noncovered position in any of the systems administered by Kentucky Retirement System, the member's retirement benefit shall be suspended for the duration of the employment. If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.

(4) Returning to work with the same principal duties. If the member has a one (1) calendar month break in service and if there was a bona fide separation from service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with the same principal duties, the member's retirement benefit shall be suspended for a period beginning on the first of the month of the reemployment and ending on the first of the month following six (6) months from the member's first employment termination date, unless the member had reached Normal Retirement Age at the time of employment termination. If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.

(5) Returning to work with different principal duties. If the member has a one (1) calendar month break in service and if there was a Bona Fide Separation from Service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with different principal duties, the member's retirement benefit shall continue unaffected.

Section 6. Returning to work for a different participating employer.

(1) No Requirement for a bona fide separation in service. If the member returns to work in any position, whether covered or noncovered, with a different participating employer than the member's last employer prior to retirement, no bona fide separation from service is required. However, the requirement that there be at least a one (1) month break in service is applicable as set forth below in this administrative regulation and in KRS 61.637.

(2) Returning to work in the same retirement system with a break in service. If the member has a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which the member retired, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

(3) Returning to work in a covered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which the member retired, the member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(4) Returning to work in a noncovered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and the member returns to work with a different participating employer in a different retirement system, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

(5) Returning to work in a different retirement system. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a different retirement system, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

Section 7. Status as an Employee. (1) A member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the member has accepted employment with the participating employer under a personal services contract. If Kentucky Retirement Systems determines that the member is an employee of the participating employer rather than an independent contractor, the member will be subject to Sections 5 and 6 of this administrative regulation. Kentucky Retirement Systems may take appropriate action to determine the individual's status as an independent contractor or employee.

Section 8. Leased Employees. (1) A member and a participating employer shall file at the retirement office written notice if the member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company. If the retirement system determines that the member is an employee of the participating employer rather than the private leasing company, temporary staffing agency, or other company, the member shall be subject to the provisions of Sections 5 and 6 of this administrative regulation.
Section 9. A Member who has Reached the Member’s Normal Retirement Age. (1) For purposes of administering the provisions of KRS 61.637, a bona fide separation from service shall not be required if a member has attained normal retirement age at the time of termination of employment. However, the requirement that there be at least a one (1) month break in service is applicable as set forth above in this administrative regulation and in KRS 61.637.

Section 10. Incorporation by Reference. (1) Form 6751, “Member and Employer Certification Regarding Reemployment”, August 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: August 3, 2007
FILED WITH LRC: August 15, 2007
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2007 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall request to be on the agency’s agenda at the address and phone number noted above. Individuals interested in being heard at the hearing shall do so in writing by September 19, 2007 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 October 1, 2007. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler
(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation establishes the requirements for returning to employment after retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer the procedures and qualifications for compliance with KRS 61.637, 26 U.S.C. 401(a) and 26 C.F.R. §§ 1.401-1(b)(1)(i) and 1.401(a)-1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their status as public defined benefit plans under 26 U.S.C. 401(a).

(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 the provisions for employment after retirement in accordance with 26 U.S.C. 401(a)(9) 26 C.F.R. §§ 1.401-1(b)(1)(i) and 1.401(a)-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: 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: All members of Kentucky Retirement Systems who become reemployed after their effective retirement date and the participating employers who employee them.

(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) 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 members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs. Members and participating employers are already required to submit completed forms and reports to Kentucky Retirement Systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members and participating employers are treated the same.

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 Retirement Systems and its participating agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. §401(a), 26 C.F.R §§ 1.401-1(b)(1)(i) and 1.401(a)-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. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(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 Kentucky Retirement Systems or its participating agencies.

(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 Kentucky Retirement Systems or its participating agencies.

(c) How much will it cost to administer this program for the first year?
year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the Kentucky Retirement Systems already administers KRS 61.637 and the agencies already file reports with Kentucky Retirement Systems.

(d) How much will it cost to administer this program for subsequent years? Minimal additional administrative 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 Chiropractic Examiners
(Repealer)


RELATES TO: KRS 312.019, 312.065
STATUTORY AUTHORITY: KRS 312.019(9)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is repealing 201 KAR 21:031 in accordance with the suggestion of LRC staff which reviewed the aforesaid administrative regulation and found it to be unnecessary and repetitive of law set forth in statute.

Section 1. 201 KAR 21:031, Board meetings, is hereby repealed.

MARK WOODWARD, President
APPROVED BY AGENCY: August 10, 2007
FILED WITH LRC: August 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2007, at 12 p.m., local time, at the Marriott Louisville East, 1903 Embassy Square Blvd., Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2007, 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 October 1, 2007.

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone 270-651-2522, fax 270-651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp, D.C., Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 21:031.

(b) The necessity of this administrative regulation: The necessity of this regulation is to comply with the suggestions of LRC staff who reviewed the aforesaid administrative regulation and found it to be unnecessary and repetitive of law set forth in statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute, KRS 312.019(9), to promulgate administrative regulations.

(2) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals an unnecessary regulation thereby adding clarity to the regulatory package.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative directly impacts the five members of the Board appointed by the Governor and the Board’s administrative staff.

(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 of the board members to comply with this administrative regulation. Although it repeals an existing regulation, the information set forth in that regulation can be found in other statutes throughout the Kentucky Revised Statutes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) to comply with the administrative regulation for any of the entities identified in question (3) above.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): As this administrative regulation repeals a regulation that restates rules found elsewhere in the Kentucky Revised Statutes, it will assist the aforesaid entities by reducing the number of unnecessary administrative regulations in their regulatory package.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No, if the cost is not an increase in fees or funding, or by the cost of the action taken by the administrative regulation. No enhancement of the 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 administrative regulation does not directly or indirectly increase any existing fees or establish any new fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the purpose of this administrative regulation is to repeal an existing 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? The Kentucky Board of Chiropractic Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 312.019(9), 312.065, and 201 KAR 21:032.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency.
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(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 will be generated as this is a repealer 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 will be generated as this is a repealer regulation.

(c) How much will it cost to administer this program for the first year? No costs are associated with the administration of this program as this is a repealer regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with the administration of this program as this is a repealer regulation.

TRANSPORTATION CABINET
Motor Vehicle Commission
(New Administrative Regulation)

605 KAR 1:03f. Automotive mobility dealer requirements and licensing.

RELATES TO: KRS 190.010(25), (27), (28), 190.031
STATUTORY AUTHORITY: 190.031, 190.073
NECESSITY, FUNCTION AND CONFORMITY: KRS 190.031
requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be an automotive mobility dealer and directs the commission to establish relevant requirements which must include provisions for automotive mobility dealers to meet reasonable and appropriate quality assurance standards. This administrative regulation sets forth those requirements and standards.

Section 1. Definitions. (1) "Adapted vehicle," in addition to the definition in KRS 190.010(27), means only those new or used motor vehicles which are specially designed or permanently modified for use by aging or disabled persons.

(2) "Equipment" as used in KRS 190 010(28) means only those mechanical or electronic devices, parts or accessories which are permanently attached to or incorporated in a motor vehicle and which are specifically designed to facilitate the use of a motor vehicle by an aging or disabled person.

(3) "Reasonable and appropriate quality assurance requirements" means compliance with all applicable statutes and regulations of the federal government and the Commonwealth of Kentucky regarding the design, construction, modification or repair of motor vehicles, including the provisions of 49 C.F.R. Part 595 and the Federal Motor Vehicle Safety Standards.

Section 2. (1) In addition to the application requirements contained in 605 KAR 1 030, an automotive mobility dealer applicant shall certify that its operations will meet reasonable and appropriate quality assurance requirements.

(2) Any automotive mobility dealer applicant that actually modifies vehicles to create adapted vehicles, installs mobility equipment or services or repairs adapted vehicles or mobility equipment, shall certify that:

(a) That all mobility equipment and materials utilized in the modification, installation, servicing or repair comply with applicable federal and state guidelines; and

(b) That the relevant personnel of the automotive mobility dealer have been trained and certified (if applicable) by the equipment manufacturer or other competent authority with regard to the modification, installation, repair or servicing.

(3) Any automotive mobility dealer that intends to sell newly modified adapted vehicles, modified or altered by third parties, shall identify the vehicle modifier or installer who will provide the modification services and shall certify that the vehicle modifier or installer will comply with applicable federal and state guidelines.

(4) Any automotive mobility dealer that cannot provide the applicable certification under this section shall provide a statement under oath as to the unavailability of the certification and the reasons therefore.

Section 3. Automotive mobility dealers shall notify the commission within twenty-one (21) days of any change regarding the source of newly adapted vehicles sold by the dealership.

Section 4. Applicants for an automotive mobility dealer license shall demonstrate at least $100,000 in net assets. In the event an applicant cannot demonstrate $100,000 in net assets, the commission, in its discretion, may accept a surety bond in the amount of any difference.

Section 5. An applicant for an automotive mobility dealer license shall demonstrate that it holds a policy for $1,000,000 in liability insurance. An automobile mobility dealer shall immediately notify the commission in the event that its liability insurance is cancelled or not renewed.

Section 6. An automotive mobility dealer, other than an automotive mobility dealer that is also a new motor vehicle dealer, may not offer, claim or indicate that it is selling new motor vehicles nor may it purport to sell or transfer a new motor vehicle on a certificate of origin. An automotive mobility dealer that is also a licensed new motor vehicle dealer may offer and sell adapted vehicles as new motor vehicles if they are of the make authorized to be sold by the new vehicle dealer license and otherwise meet the definition of a new motor vehicle.

Section 7. Unless authorized by any other applicable Kentucky statute, an automotive mobility dealer shall title all mutilated vehicles or assign all titled vehicles into the dealership name prior to any sale to a customer.

Section 8. An automotive mobility dealer shall be precluded from selling any adapted vehicle that does not have proof that it has been adapted or modified in compliance with federal law.

Section 9. An automotive mobility dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not sell any vehicles other than adapted vehicles.

RAY COTTRELL, Chairman
APPROVED BY AGENCY: August 13, 2007
FILED WITH LRC: August 14, 2007 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2007 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Training Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If you have a disability for which the Motor Vehicle Commission needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 407 Wapping Street, Frankfort, Kentucky 40622, phone (502) 564-3750, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person Carlos R. Cassady, Executive Director

- 684 -
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for the initial application and renewal of the license to be an automotive mobility dealer in Kentucky and sets forth the reasonable and appropriate quality assurance standards which must be met by the applicants.
(b) The necessity of this administrative regulation: KRS 190.031 requires the Motor Vehicle Commission to establish requirements for the initial application for and renewal of a license to be an automotive mobility dealer and directs the Commission to establish relevant requirements, which must include provisions for automobile mobility dealers to meet reasonable and appropriate quality assurance standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standard to be met by applicants and licensed automotive mobility dealers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the eligibility requirements for applicants who wish to become and remain automotive mobility dealers in Kentucky.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effect of administration of the statutes:
(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become automotive mobility dealers in Kentucky. The number of such entities is unknown.
(4) Provide an analysis of how the entities identified in question (3) were 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) have to take to comply with this administrative regulation or amendment: This regulation establishes eligibility requirements for licensing as an automotive mobility dealer and the entities identified in question (3) will have to submit the required application, including all information required by the regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as it will vary depending on the proposed scope and size of the operations of each applicant.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as automotive mobility dealers in Kentucky.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No known costs.
(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.
(c) What is the source of funding to be used for the implementation and enforcement of the administrative regulation: Application fees.
(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement the administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 established the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.
(6) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.
(9) TIERING: Is tiering applied? No, tiering is not applied because all automotive mobility dealers affected by this regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement 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? Motor Vehicle Commission.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 190.031, 190.073.
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? Regulation will generate between $100 and $200 per application, however the number of applications to be received is unknown.
(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? Revenue will generate between $100 and $200 per application, however the number of applications to be received is unknown.
(c) How much will it cost to administer this program for the first year? Revenue will generate between $100 and $200 per application, however the number of applications to be received is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.
(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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 CABINET
Kentucky Board of Education
Department of Education
(Repealer)


RELATES TO: KRS 159.051, 186.440
STATUTORY AUTHORITY: KRS 156.070
NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 704 KAR 7:100, Approval of operation of alternative education programs for purposes of driver's license revocation. This administrative regulation is no longer needed since it addressed the previous version of KRS 159.051 requiring school districts to have approved alternative education programs if they wanted to implement KRS 159.051. KRS 159.051 no longer mandates that school districts have approved alternative education programs in order to implement the no pass, no drive program, and therefore 704 KAR 7:100 is no longer needed.

Section 1. 704 KAR 7:101, Approval of operation of alternative education programs for purposes of driver's license revocation, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).
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KEVIN M. NOLAND, Interim Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: August 14, 2007
FILED WITH LRC: August 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 24, at 2 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Main Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Main Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 704 KAR 7:100, which required school districts to have alternative education programs before the No Pass, No Drive legislation would apply. The No Pass, No Drive legislation passed in 2007 applies to all school districts.
(b) The necessity of this administrative regulation: Since the revised legislation applies to all school districts 704 KAR 7:100 is no longer necessary.
(c) How this administrative regulation conforms to the content of the authorizing statute: Since the revised legislation applies to all school districts 704 KAR 7:100 is no longer necessary.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Since the revised legislation applies to all school districts 704 KAR 7:100 is no longer necessary.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: NA
(b) The necessity of the amendment to this administrative regulation: NA
(c) How the amendment conforms to the content of the authorizing statute: NA
(d) How the amendment will assist in the effective administration of the statutes: NA
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: NA

(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: NA
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): NA
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The proposed repeal does not result in additional costs.
(b) On a continuing basis: The proposed repeal does not result in additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: NA
(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 proposed repeal does not result in additional costs.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The proposed repeal does not result in additional costs.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

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? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 159.051 as required.
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 in effect:
(a) How much revenue will this administrative regulation generate for the state, local government (including cities, counties, fire departments, or school districts) for the first year? None, is a repealer.
(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, is a repealer.
(c) How much will it cost to administer this program for the first year? None, is a repealer.
(d) How much will it cost to administer this program for subsequent years? None, is a repealer.

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Workers’ Claims
(Repealer)


RELATES TO KRS 342.276, 342.735
STATUTORY AUTHORITY: KRS 342.276(2), 342.735(1)
NECESSITY, FUNCTION, AND CONFORMITY: 803 KAR 25:250 established procedures to mediate medical disputes. However, after evaluation of the program only fifteen per cent of the disputes were settled. Many parties felt it was an additional step in the process which was too frequently unsuccessful. This administrative regulation should be repealed until a more successful program can be designed.

Section 1. 803 KAR 25:250, Mediation of medical disputes, is hereby repealed.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: August 3, 2007
FILED WITH LRC: August 6, 2007 at 1 p.m.
VOLUME 34, NUMBER 3 – SEPTEMBER 1, 2007

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2007, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 867 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. 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: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 867 Chamberlin Avenue, Frankfort, Kentucky 40601, phone 502 564-5550, ext. 4464, fax 502 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation repeals 803 KAR 25:250, Mediation of Medical Disputes.
   (b) The necessity of this administrative regulation: The mediation program has not been as successful as was anticipated. After evaluation, approximately 15% were settled. Many parties complained of the additional steps and expense in the process. Therefore, it would be more cost effective for all parties to repeal this administrative regulation.
   (c) How this administrative regulation conforms to the content of the authorizing statute: The Executive Director has the authority to establish programs to efficiently and effectively resolve claims. The original administrative regulation for mediation proved to be inefficient and not effective.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will eliminate the requirement for mediation for medical fee disputes and save both time and expense.
   (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 repeals an existing administrative regulation. There is no amendment.
   (b) The necessity of the amendment to this administrative regulation: No amendment
   (c) How the amendment conforms to the content of the authorizing statute: 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: All injured workers with workers' compensation claims, carriers, attorneys, and employers will be impacted by eliminating this requirement.
   (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. Many parties on both sides of a claim complained this additional step in the process of medical fee disputes was costly, time-consuming, and ineffective in resolving disputes. The mediation process has been eliminated and all parties think this repeal of the administrative regulation is appropriate.
   (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.
      (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.
      (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.
      (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.
      (f) TIERING: Is tiering applied? Tiering does not apply, because this repeal affects all parties equally.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Fraud, Waste and Abuse, Identification and Prevention
(New Administrative Regulation)

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: 15.380 - 15.404, 218A 240
STATUTORY AUTHORITY: KRS 194A.050(1), 218A.1446(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic record-keeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. KRS 218A.1446(3) allows pharmacies to request an exemption from electronic reporting pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Standards Branch and the Office of Drug Control Policy. This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system, and establishes an exemption from electronic reporting if a pharmacy shows an imposition of additional cost and maintains a written log or record described in KRS 218A.1446(2)(b).

   (2) "Cabinet" means the Cabinet for Health and Family Services or its designated agent
   (3) "Dispenser" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully dispenses a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
   (4) "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means an electronic record-keeping mechanism approved by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
   (5) "Law enforcement officer" means a: (a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2), (b) Kentucky peace officer certified pursuant to KRS 15.380 to 15.404 as a: 1. Kentucky State Police officer; 2. City, county, and urban-county police officer; 3. Deputy sheriff; or 4. State or public university safety and security officer;
(c) Certified or full-time peace officer of another state; or
(d) Federal peace officer;
1. Whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs; and
2. Who is engaged in a bona fide specific investigation.
(5) "ODCP" means the Office of Drug Control Policy within the
Kentucky Justice and Public Safety Cabinet.
(7) "Purchaser" means an individual age eighteen (18) or older
who purchases, or attempts to purchase, a nonprescription com-
 pound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting (1) A dispenser shall maintain a record of each purchase, or attempted purchase, of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.
(2) Using a computer with a high-speed Internet connection and software provided by the cabinet, a dispenser shall transmit the following information electronically at the point of sale of a nonprescription product described in subsection (1) of this section:
(a) Date of transaction pursuant to KRS 218A.1146(2)(b);
(b) Identifying information regarding the purchaser pursuant to
KRS 218A.1146(2)(b);
(c) Amount and name of the product dispensed pursuant to
KRS 218A.1146(2)(b); and
(d) Transaction number.
(3) The cabinet shall provide a toll-free telephone number for technical support
(4) A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of information described in subsection (2) of this section.
(5) A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.

Section 3. Extension for Reporting Information Beyond the Point of Sale and Exemption from Electronic Reporting. (1) If a dispenser experiences mechanical or electronic failure, the cabinet may grant an extension for reporting the information required by Section 2(2) of this administrative regulation
(2) To request an extension beyond the point of sale for reporting information required by Section 2(2) of this administrative regulation, a dispenser shall submit a written request to the cabinet that
(a) States the reason for the request;
(b) Identifies the period of time for which the extension is neces-
sary, not to exceed seventy-two (72) hours; and
(c) Is submitted:
1. Within twenty-four (24) hours of discovery of the circum-
stances resulting in the need for an extension request; or
2. On the day following a holiday or weekend if the discovery occurs on a day that cabinet offices are closed.
(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser shall:
(a) Maintain a written log of the information required by Section
2(2) of this administrative regulation; and
(b) Enter the information in the KEMPT system within seventy-
two (72) hours of the system becoming operational.
(4) If an electronic report transmitted by a dispenser fails to reach the cabinet:
1. The cabinet shall grant an automatic extension to the dis-
 perser;
2. The dispenser shall record the information required by Sec-
 tion 2(2) of this administrative regulation in a hardcopy signature logbook.
(5) Pursuant to KRS 218A.1146(3)(c), an exemption from the electronic reporting requirement described in Section 2 of this ad-
 ministrative regulation may be granted upon receipt by the branch and ODCP of a dispenser's written request for exemption if the request:
(a) Shows that additional costs to the pharmacy would be in-
curred; and
(b) Provides that a written log of information subject to inspec-
tion by the branch and described in Section 2(2) of this adminis-
trative regulation will be maintained.

Section 4. Request for KEMPT Reports (1) The cabinet shall provide a KEMPT report:
(a) To a law enforcement officer during the course of a criminal investigation;
(b) To a reporting pharmacy;
(c) Pursuant to a subpoena issued by a grand jury; or
(d) Pursuant to a court order issued by a criminal court.
(2) The cabinet shall be prohibited from providing a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.
(3) A law enforcement officer or reporting pharmacy may submit an electronic request for a KEMPT report at the following web-
site: http://chfs.ky.gov/kempt

Section 5. Refusal of Sale. If a dispenser refuses to sell a prod-
cut in accordance with the nine (9) gram restriction established in
KRS 218A.1146(5), the dispenser shall document in writing or enter the refusal on the KEMPT system as an attempted purchase.

STEVEN D. DAVIS, Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 15, 2007
FILED WITH LRC August 15, 2007 at 10 a.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2007, at 9 a.m. in the cafeteria meeting room on the first floor of the OHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending the hearing shall notify this agency in writing by September 14, 2007, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to 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 October 1, 2007. 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 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven D. Davis or Stephanie Brammer-Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This adminis-
trative regulation establishes an electronic recordkeeping mechanism called the Kentucky Electronic Methamphetamine Preursor Tracking (KEMPT) system for monitoring the sale of nonprescription compounds, mixtures, or preparations that contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. This admin-
istrative regulation also allows pharmacies to request an ex-
emption from electronic reporting pursuant to KRS 218A.1146(3)(c).
(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to comply with SB 88 2007 GA by establishing an electronic recordkeeping mechanism to monitor the sale of nonprescription products containing ingredients that could be used to make methamphetamine.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the content of KRS 218A.1146 by establishing an electronic recordkeeping mechanism to monitor the sale of nonprescription products containing ingredients that could be used to make
methamphetamine.

(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 KRS 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of nonprescription products containing ingredients that could be used to make methamphetamine.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacies each time that a nonprescription product containing ingredients that could be used to make methamphetamine is dispensed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation or amendment: Unless an exemption from electronic reporting is granted, Kentucky's pharmacies will be required to report information on the KEMPT system regarding the sale of nonprescription compounds, mixtures, or preparations that contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pharmacies will not incur any costs when complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation establishes an electronic monitoring system to help detect possible misuse of products containing ingredients that could be used to make methamphetamine.

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

(a) Initially: The cabinet anticipates that it will cost approximately $400,000 during the first year to implement the KEMPT system established by this new administrative regulation. On a continuing basis: The cabinet anticipates that approximately $40,000 per year will be incurred on a continuing basis as costs to the cabinet to fund a staff person responsible for providing technical support related to the KEMPT system. Additionally, after the first year of implementation of this new administrative regulation, the cabinet anticipates that the Office of Drug Control Policy within the Justice Cabinet (as part of a joint initiative with this agency pursuant to SB 88 2007 GA) will use approximately $500,000 secured through a federal grant to continue implementation of the KEMPT system.

(6) What is the source of the funding to be used for the implementation of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from state general funds. After the first year of implementation of this administrative regulation, monies from a federal grant will be used by the Office of Drug Control Policy to continue operating the KEMPT system.

(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 administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities 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? This administrative regulation affects Kentucky's pharmacies each time that a nonprescription product containing ingredients that could be used to make methamphetamine is dispensed.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 218A.1446

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 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? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(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? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? The cabinet anticipates that it will cost approximately $400,000 during the first year to implement the KEMPT system established by this new administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The cabinet anticipates that approximately $40,000 per year will be incurred during subsequent years as costs to the cabinet to fund a staff person responsible for providing technical support related to the KEMPT system. Additionally, after the first year of implementation of this new administrative regulation, the cabinet anticipates that the Office of Drug Control Policy within the Justice Cabinet (as part of a joint initiative with this agency pursuant to SB 88 2007 GA) will use approximately $500,000 secured through a federal grant to continue implementation of the KEMPT system.

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 Mental Health and Mental Retardation Services Division for Mental Health and Substance Abuse (New Administrative Regulation)

908 KAR 2:220. Peer specialist services.

STATUTORY AUTHORITY: KRS 12.455, 194A.030, 194A.050, 210.450

NECESSITY, FUNCTION AND CONFORMITY: KRS 210.450 authorizes the secretary of the Cabinet for Health and Family Services to promulgate regulations governing qualifications of personnel, standards for personnel management operations and consulta-
tion in ascertaining local needs for community mental health and mental retardation programs. This administrative regulation establishes the minimum eligibility and training requirements for peer specialists.

Section 1. Definitions. (1) "Applicant" means an individual seeking to complete the peer specialist training.
(2) "Application" means completing the Kentucky Peer Specialist Training Application form and the Kentucky Peer Specialist Training Short - Essay Form and submitting them to the Department for Mental Health and Mental Retardation Services.
(3) "Certificate" means a document verifying completion of the training requirements for peer specialists as outlined in this administrative regulation.
(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).
(5) "Client" means an individual who receives services from any organization outlined in Section 8 of this administrative regulation.
(6) "Community Mental Health-Mental Retardation Board" is defined by KRS 210.370 to 210.485.
(7) "Department" means the Department for Mental Health and Mental Retardation Services (DMHMRs).
(8) "Paraprofessional" means an individual who does not meet the educational requirement for a mental health professional and who is working under the supervision of a Qualified mental health professional.
(9) "Peer specialist" means a paraprofessional who has fulfilled the requirements of this administrative regulation.
(10) "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12).
(11) "Severe mental illness" means the conditions defined by KRS 210.005 (2) and (3).

Section 2. Eligibility. An applicant shall:
(1) Have a current or past diagnosis of severe mental illness or a severe emotional disability;
(2) Have received or be receiving treatment; and
(3) Have a minimum educational requirement of a high school diploma or General Educational Development (GED) certificate.

Section 3. Department's Responsibilities. It shall be the responsibility of the department to:
(1) Make application forms available through:
   (a) Written or verbal request to DMHMRs;
   (b) The DMHMR's website;
   (c) Community Mental Health - Mental Retardation Boards;
   (d) DMHMRs state operated or contracted facilities; and
   (e) Consumer and family organizations.
(2) Provide notification of trainings to include:
   (a) Date;
   (b) Time; and
   (c) Place.
(3) Provide training from a standard curriculum with the following core competencies:
   (a) The shift from maintenance to recovery;
   (b) The emergence of psychosocial rehabilitation as the road to recovery;
   (c) The role and conduct of a peer specialist in the recovery process;
   (d) Using one's recovery story;
   (e) The power of negative program environments;
   (f) Creating program environments that promote recovery;
   (g) Beliefs and values that promote and support recovery;
   (h) Impact of diagnosis on one's self-image;
   (i) Mental illness, diagnosis and medications;
   (j) Dissatisfaction as an avenue for change;
   (k) Facing one's fears;
   (l) Combating negativity;
   (m) Problem solving;
   (n) The role of spirituality in recovery and stress reduction exercises;
   (o) Creating a wellness recovery action plan;
   (p) Stages in the recovery process;
   (q) Power, conflict, and integrity in the workplace;
   (r) Effective listening and the art of asking questions;
   (s) Determining one's recovery goals;
   (t) Using support groups to promote and sustain recovery;
   (u) Accomplishing one's recovery goals;
   (v) The building blocks of the recovery process; and
   (w) Co-occurring mental health and substance use disorders.
(3) Provide each peer specialist a certificate of successful completion of the program.
(4) Maintain documentation of the:
   (a) Application;
   (b) Competency examinations; and
   (c) Examination results.
(6) Maintain a database of names of peer specialists.

Section 4. Peer Specialist Responsibilities. An individual seeking to provide peer specialist services shall:
(1) Complete and submit an application for training to DMHMRs;
(2) Complete the DMHMRs peer specialist training program;
(3) Successfully complete the DMHMRs peer specialist examination; and
(4) Complete and maintain documentation of a minimum of six (6) hours of job related training or education in each subsequent year of employment.

Section 5. Request to Waive the DMHMRs Training Program. (1) An applicant may request to waive the DMHMRs Training Program under the following provisions:
   (a) Completion of the application;
   (b) Documentation of completion of a peer specialist program sponsored by another state with the core competencies of the DMHMRs training; and
   (c) Documentation that the training has occurred within five (5) years of the application date.
(2) DMHMRs shall review all requests to waive the training requirement and may:
   (a) Grant, in writing, the request based on the documentation provided by the applicant; or
   (b) Deny, in writing, the request should the applicant fail to demonstrate compliance with any portion of this administrative regulation.
(3) If an applicant is denied a training waiver, he or she may appeal the denial by completing the DMHMRs peer specialist training in accordance with Section 3 of this administrative regulation.

Section 6. Supervision of Peer Specialist. Peer specialist services shall be provided under the supervision of a QMHP; and face-to-face supervisory meetings shall occur no less frequently than once every two (2) weeks.

Section 7. Scope of Services. A peer specialist shall:
(1) Be a paraprofessional whose primary responsibility is to help clients achieve their own goals and services;
(2) Provide services which are structured scheduled activities that promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for adults with severe mental illness or a child with a severe emotional disability, and
(3) Openly share their recovery stories with clients.

Section 8. Employment. A peer specialist may be employed by:
   (a) Community Mental Health - Mental Retardation Board; or
   (b) State operated or contracted facility.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Kentucky Peer Specialist Training Application", 2007 edition; and
   (b) "Kentucky Peer Specialist Training Short - Essay Form", 2007 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane.
Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN M. BURT, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: August 2, 2007
FILED WITH LRC: August 10, 2007 at 11:00 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21st, 2007 at 9 a.m. in the Cafeteria Meeting Room on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14th, 2007, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 October 1st, 2007. 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 502-564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Ijeoma Enje, (502) 564-4860, Sandra Silver, (502) 564-4456
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirement for a peer specialist position, specifying qualifications, training, and supervision requirements to enable mental health system providers to employ peer specialists.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure that peer specialists working within the mental health system are appropriately trained and supervised.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.450, in that it establishes qualifications and standards for personnel who participate in meeting mental health needs of the citizens of the Commonwealth.
(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 statute by establishing criteria whereby peer specialists can be trained and supervised to meet the mental health needs of citizens of the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: the Kentucky Department for Mental Health and Substance Abuse Services DMHMRs operated and contracted in-patient facilities The Regional MH/MR Boards (Community Mental Health Centers) Individuals seeking to become peer specialists individuals who may receive services from peer specialists.
(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 DMHMRs will be required to implement a system to train peer specialists. There is no requirement that a peer specialist be hired. However, should an in-patient facilities choose to do so, it will be required to train individuals for recruiting, hiring, and supervising peer specialists. There is no requirement that a peer specialist be hired. However, should a Regional MH/MR Board choose to do so, it will be required to establish systems for recruiting, hiring, and supervising peer specialists. Individuals seeking to become peer specialists will be required to complete the DMHMRs application process and training.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost the DMHMRs $35,000 in the first year and $25,000 during each subsequent year to establish and implement the training and certification requirements. If an in-patient facility elects to hire a peer specialist, it will incur the costs associated with hiring and supervision. That cost cannot be estimated at this time, particularly since no facility will be required to employ a peer specialist. I am MH/MR board elects to hire a peer specialist, it will incur the expenses necessary to pay salaries and associated costs. That cost cannot be estimated at this time, particularly since no board will be required to employ a peer specialist. There is no expense to the individual for the initial peer specialist training. However, individuals who become peer specialists may experience some minimal cost associated with obtaining continuing education requirements.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DMHMRs will benefit by increasing the availability of qualified individuals who can provide services to individuals with mental illnesses in the Commonwealth. In-patient facilities will benefit by having an additional service component provided by peer specialists. Regional Boards will benefit by having additional human resources to fulfill their mission to serve individuals with mental health needs in their region. Individuals who become peer specialists will benefit from new, meaningful employment opportunities. Moreover, they will be exposed to training designed to enhance their education and skills, thereby increasing their qualifications and credentials. Individuals receiving services from peer specialists will benefit from access to persons who may have a similar background. They will observe and interact with others who have had comparable experiences and may serve as role models for more active participation in the mental health system.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: It will cost approximately $35,000 for the first year to establish and implement the training and certification process.
(b) On a continuing basis: It will cost approximately $25,000 for each subsequent year to provide the training and certification.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding is the Federal Mental Health Block Grant.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There will be no need to increase fees or funding 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 establish any fees or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? Tiering will not be applied since every applicant has equal chance of applying for the training.

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

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(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

(a) This regulation will impact the Division of Mental Health and Substance Abuse within the Department for Mental Health and Mental Retardation Services.

(b) DMH/MRS operated and contracted in-patient facilities.

(c) Regional Mh/MR Boards (Community Mental Health Centers)

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.010, 210.040, 210.370-485.

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 new revenues 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 administrative regulation will not generate new revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? $35,000 in federal block grant funds will be used to provide the curriculum training and maintain the data base.

(d) How much will it cost to administer this program for subsequent years? $25,000 in federal block grant funds will be used to provide the curriculum training and maintain the data base.

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 August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 14, 2007 at 9:00 a.m., in Room 154 of the Capitol Annex. Senator Dick Roeding called the meeting to order, the roll call was taken. The minutes of the July 9, 2007 meeting were approved.

Present were:

- Member: Senators Alice Forgy Kerr, Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Ron Weston.
- LRC Staff: Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Emily Caulli, Jennifer Beeler, Laura Napier, and Ellen Steinberg.
- Guests: Senator Tim Shaughnessy, Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Kathryn Dunnigan, Sarah Johnson, State Board of Elections; William Hanes, Eric Wampler, Kentucky Retirement Systems; Tim Thomas, John Covington, Kentucky Infrastructure Authority, Eric Clark, Kentucky Board of Dentistry; Garvis Campbell, Karen Howard, Justice and Public Safety Cabinet; Darren Bilberry, Larry Boucher, Brigid DeVries, Kevin Nolan, Julian Tackett, Kevin Brown, Larry Taylor, Kentucky Board of Education; Rick Burtkefson, Kentucky State Board on Electric Generation and Transmission Siting; Kathy Adams, Elizabeth Caywood, Justin Dearinger, David Gayle, Cabinet for Health and Family Services; Charles Atinay, Rick Jensen, Fayette County Public Schools; Bart Baldwin, Children's Alliance; Tim Greener, Christian Academy of Louisville; C. Ray Hall, Courier Journal; Ray Hildebrand, Diocese of Covington; Melissa Hinch, Heidi Schuesler, Protection and Advocacy; Jim Matthys Diocese of Owensboro Catholic Schools; John Medely Archdiocese of Louisville; Ed Schoenbaechler, Kentucky Non-Public Schools Commission; Wilson Sears, Public Schools; Lesa Speer, Archdiocese Of Louisville; Alexandra Thurstone, Kentucky Non-Public Schools Commission; Michael Wloskowski, Lafayette High School Athletics; Teresa Combs, Kentucky School Boards Association; Betty Muntz, Kentucky Council of Administration for Special Education.

The Administrative Regulation Review Subcommittee met on Tuesday, August 14, 2007 and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:** Division of Student and Administrative Services: Kentucky Loan Program

- KAR 3:100. Administrative wage garnishment. Becky Gilpatrick and Melissa Justice, senior associate counsel, represented the Division.

Grant Programs

- KAR 5:145. CAP grant award determination procedure.

**KENTUCKY STATE BOARD OF ELECTIONS:** Help America Vote Act 2002

- KAR 6:030. Uniform definition of a vote. Kate Dunnigan, general counsel; and Sara Johnson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 5 to clarify the procedure to correct an overvote; (2) to amend Section 6 to delete a provision that prohibited counting an abbreviated form of a surname; and (3) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET:** Kentucky Retirement Systems: General

- KAR 1:180. Death before retirement procedures. William Hanes, executive director; and Eric Wampler, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECCESSITY, 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 the NECCESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:200. Retirement procedures and forms.

A motion was made and seconded to approve the following amendments: (1) to amend a statutory citation; (2) to amend the NECCESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 11 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 8 to reference federal income tax withholding information requirements; and (4) to amend Section 11 to delete two (2) documents previously incorporated by reference that are not covered by the reference to federal requirements for income tax withholding information in Section 8. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:240. Death after retirement procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECCESSITY, 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 the NECCESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 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.

105 KAR 1:270. Special federal income tax withholding.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECCESSITY, 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 the NECCESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECCESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220 and to include a safe harbor provision in compliance with the federal Pension Protection Act of 2006; and (3) to amend Sections 1 through 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.

**KENTUCKY INFRASTRUCTURE AUTHORITY:** Authority

- KAR 17:011. Repeal of 200 KAR 17:010 and 200 KAR 17:020. Tim Thomas, executive director; and John Covington, financial analyst, represented the authority.

A motion was made and seconded to approve the following amendments: to delete 200 KAR 17:010 as one of the administrative regulations being repealed. Without objection, and with agreement of the agency, the amendments were approved.
KENTUCKY BOARD OF DENTISTRY: Board
201 KAR 8:450. Dental hygienist services when supervising dentist not physically present. Eric Clark, executive director, represented the board.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary
501 KAR 6:050. Luther Luckett Correctional Complex. Karen Howard, attorney; and Garves Campbell, paralegal, represented the cabinet.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation
702 KAR 7:085. Designation of agent to manage high school interscholastic athletics. Brigid DeVines, commissioner, and Julian Tackett, assistant commissioner, represented the Kentucky High School Athletic Association. Kevin Noland, interim commissioner of education, represented the board.

Co-Chair Roedig stated that this administrative regulation took the wrong approach to regulating recruiting in high school athletics by penalizing the students instead of the offending school, coach, or administrator. He stated it was wrong to punish students for the agency’s inability to administer a system that created fair opportunity for athletic competition. He stated that the agencies involved were all creations of the legislature, directly or indirectly, and that anything created by the legislature could be changed or eliminated by the legislature.

A motion was made and seconded to find this administrative regulation deficient, and, upon a roll call vote, it was found to be deficient. The vote was six ayes and zero nays.

Exceptional and Handicapped Programs
707 KAR 1:250. Free appropriate public education. Kevin Noland, interim commissioner, represented the board. Kevin Brown, assistant general counsel, and Larry Taylor, director, Division for Exceptional Children Services, represented the department. Heidi Schissler, legal director, represented Kentucky Protection and Advocacy. Teresa Combs, senior attorney, represented the Kentucky School Boards Association. Betty Munz represented the Kentucky Council of Administrators of Special Education.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Section 7 to correct statutory citations; and (2) to amend Sections 1, 3, 4 through 6, 9, and 10 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

707 KAR 1:300. Child find, evaluation, and reevaluation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 4 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

707 KAR 1:310. Determination of eligibility.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 through 6 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

707 KAR 1:320. Individual education program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 2 to cite the relevant federal regulation; and (3) to amend Sections 1 through 9 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


Ms. Schissler spoke in opposition to a provision of this administrative regulation. She stated that the statute of limitations of one (1) year to file a state complaint was inadequate. She stated that there were two avenues of redress for parents: (1) requesting a due process hearing; and (2) filing a state complaint. She stated the state complaint process was faster and less expensive and should have a statute of limitations that was longer than one (1) year. She stated that parents used the state complaint process more frequently and the statute of limitations for state complaints should be equal to the statute of limitations for due process hearing requests, which was three (3) years.

Ms. Combs spoke in support of the regulation. She stated that the one (1) year statute of limitations for state complaints should remain unchanged in order to be consistent with federal law and to facilitate the provision of services to a child more quickly.

Ms. Munz spoke in support of the administrative regulation. She stated her organization was very involved in the regulation process and their board voted to endorse the administrative regulations as they were written.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 1 through 3 to cite the relevant federal regulation; and (3) to amend Sections 1 through 16 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 6 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

707 KAR 1:380. Monitoring and recovery of funds.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 through 6 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Kentucky State Board on Electric Generation and Transmission Siting: Utilities
807 KAR 5:110. Board proceedings. Rick Bertelson, staff attorney, represented the board.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Community Based Services: Division of Protection and Permanency: Child Welfare
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922 KAR 1:300. Standards for child-caring facilities. Elizabeth Caywood, commissioner's office, and Kathy Adams, assistant director, Division of Protection and Permanency, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Section 1 to delete the definitions of unused terms; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, and 3 through 6, to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:310. Standards for child-placing agencies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 4 to correct statutory citations; (2) to amend Section 1 to delete the definitions of unused terms; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 6 through 8, and 10 through 24 to comply with the drafting and formatting 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:

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Exceptional and Handicapped Programs.

707 KAR 1:280. Definitions. Kevin Noland, interim commissioner of education, represented the Board of Education; and Kevin Brown, assistant general counsel; and Larry Taylor, director, Division for Exceptional Children Services, represented the department. Heidi Schissler, legal director, represented Kentucky Protection and Advocacy. Teresa Combs, senior attorney, represented the Kentucky School Boards Association. Betty Munzt represented the Kentucky Council of Administrators of Special Education.

Ms. Schissler spoke in opposition to two provisions of this administrative regulation. She stated that her agency often represented children, parents, and foster parents involved in the special education system. She stated that the regulation process had been very open but that her agency still had concerns about two issues: (1) the definition of parent; and (2) the requirement that misbehavior be substantially similar to prior misbehavior before determining it is a manifestation of a disability. Ms. Schissler stated that foster parents should be allowed to act as a parent to make educational decisions for a child before the biological parents' rights are terminated if the biological parents are uninvolved and the foster parent is the person best suited to make those decisions. She stated that the "substantially similar" language may be interpreted by a school to require a child to misbehave in an identical manner before the misbehavior was identified as a manifestation of the child's disability.

Ms. Combs spoke in support of the administrative regulations. She stated her organization worked to help districts assist students with disabilities. She stated that changing the regulation to allow a foster parent to act as the parent to make educational decisions could leave districts vulnerable to legal challenges because Kentucky law gave that right to biological parents until their parental rights were terminated by a court order. In appropriate cases, the law allowed a district to name a foster parent as a surrogate parent and gave them the right to make those decisions. Ms. Combs stated that the current "substantially similar" language should be retained. She stated it allowed the child's IEP team to evaluate the child's behavior in the school setting and determine whether the misbehavior was a manifestation of the child's disability.

Ms. Munzt spoke in support of the regulations. She stated her organization was very involved in the regulation process and their board voted to endorse the administrative regulations as they were written.

Representative Lee stated he had concerns about foster parents not being permitted to act as parents in making educational decisions. He stated that the biological parents may not be present or capable of making decisions for their child. He stated that he had concerns that foster children with disabilities were not treated the same as children with disabilities from more stable families.

Mr. Noland stated districts address the issue by investigating to determine if the child's biological parents are involved. If they were not, the district proceeded with the foster parent as a surrogate parent with the authority to make decisions on behalf of the child. The regulations would continue to allow that but the districts would need to investigate each situation to determine the extent of the biological parents' involvement.

Ms. Schissler stated she had never known of a foster parent being named a surrogate parent.

Mr. Noland stated he knew that districts sometimes named foster parents as surrogate parents and it was an issue they could address through training for the districts.

In response to a question by Representative Lee, Mr. Noland stated that a foster parent would not have to go to court to be named a surrogate parent. Instead, that decision could be made by the child's admissions and release committee at the local school.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Section 1 to correct technical errors and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to find this administrative regulation deficient and, upon a roll call vote, it was found to be deficient. The vote was seven yes, zero nays, and one pass.

The agency requested that this administrative regulation be deferred until next month's meeting of the Administrative Regulation Review Subcommittee. Without objection, and with agreement of the subcommittee, this administrative regulation was deferred.


In response to questions by Senator Tapp, Mr. Noland stated that the federal regulation allowed a district to respond to a parent's request for an amendment to a child's record within a reasonable period of time and that the state administrative regulation used the same language. He stated that it was difficult to choose a timeframe that would fit every situation and that they tried not to go beyond the mandates of federal law in order to allow local discretion.

Mr. Brown stated that what was a reasonable time would vary depending upon the circumstances and that they had deferred to the federal law.

Senator Tapp stated that parents need to be kept informed and that they may not know the legal definition of a reasonable time.

In response to a question by Co-Chair Damon about whether the department would defer the regulation to work on the issues that had been raised, Mr. Noland stated that the regulations were needed to provide guidance for the next school year.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 4, and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to find this administrative regulation deficient and, upon a roll call vote, it was found to be deficient. The vote was seven yes, zero nays, and one pass.

The agency requested that this administrative regulation be deferred until next month's meeting of the Administrative Regulation Review Subcommittee. Without objection, and with agreement of the subcommittee, this administrative regulation was deferred.


806 KAR 6.120. Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.
Trade Practices and Frauds
806 KAR 12:120. Suitability in Annuity Transactions.
806 KAR 12:140. Life Insurance Illustrations.
806 KAR 12:150. Annuity Disclosures.
806 KAR 12:170. Life Insurance Disclosures.

Insurance Contract
806 KAR 14.005. Rate and Form Filing for Life Insurers.

Life Insurance and Annuity Contracts
806 KAR 15:070. Annuity Nonforfeiture.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Radiation Operators Certification
902 KAR 105.040. General radiation operator requirements.
902 KAR 105.061. Repeal of 902 KAR 105.060.
902 KAR 105:070. Violations and endorsement.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 19, 2007

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 19, 2007, having been referred to the Committee on July 5, 2007, pursuant to KRS 13A.290(6):

16 KAR 1.030
16 KAR 9 080
102 KAR 1:175

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 19, 2007 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 15, 2007

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 August 15, 2007, having been referred to the Committee on August 1, 2007, pursuant to KRS 13A.290(6):

201 KAR 2.250
201 KAR 9 460
201 KAR 20:070 & E
201 KAR 20:370
201 KAR 20:411
201 KAR 22.020
201 KAR 22:040
900 KAR 6 050

The following administrative regulations were deferred pursuant to KRS 13A.300:

900 KAR 6 050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 34 of the Administrative Register from July, 2007 through June, 2008. 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 33 are those administrative regulations that were originally published in VOLUME 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 34 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 34 of the Administrative Register, and is mainly broken down by agency.
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* Statement of Consideration not filed by deadline

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** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(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.
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