ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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SATURDAY, MARCH 1, 2008

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet March 10, 2008 at 1:30 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2063-2064** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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201 KAR 20:270. Programs of nursing site visits. (Not Amended After Comments)
201 KAR 20:290. Standards for prelicensure registered nurse and practical nurse secondary or distance learning sites. (Not Amended After Comments)
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Department of Workers' Claims

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services. (Not Amended After Comments) (Deferred from November)

803 KAR 25:280. Certification of drug-free workplace. (Deferred from January)

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806 KAR 12:180. Military sales practices. (Written Comments Recieved)

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806 KAR 14:006. Property and casualty insurance form filings.(Deferred from January)

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810 KAR 1:027. Entries, subscriptions, and declarations. (Not Amended After Comments) (Deferred from December)

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906 KAR 1:120. Informal dispute resolution. (Not Amended After Comments) (Deferred from January)

Department for Medicaid Services

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907 KAR 1:013 & E. Diagnostic-related group (DRG) inpatient hospital reimbursement. ("E" expires 6/13/08) (Written Comments Received)

907 KAR 1:044. Community mental health center services. (Written Comments Received)

907 KAR 1:160 & E. Home and community based waiver services. ("E" expires 7/4/08) (Written Comments Received)

907 KAR 1:815 & E. Nondiagnostic related group inpatient hospital reimbursement. ("E" expires 6/13/08) (Hearing/Written Comments)

907 KAR 1:820 & E. Disproportionate share hospital distributors. ("E" expires 6/13/08) (Written Comments Received)

Department of Community Based Services

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922 KAR 1:350. Family preparation.(Deferred from February)

922 KAR 1:470. Central registry. (Deferred from February)

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922 KAR 2:160. Child care assistance program. (Not Amended After Comments) (Deferred from January)

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child-care centers. (Not Amended After Comments) (Deferred from February)

922 KAR 2:210. STARS for KIDS NOW Program for Type II licensed and certified family child-care homes. (Not Amended After Comments) (Deferred from February)

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

Filing and Publication

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

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

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

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 14, 2008

STATEMENT OF EMERGENCY
103 KAR 3:010E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representatives to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
WILLIAM M. COX, Sr., Commissioner

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Emergency Amendment)

103 KAR 3:010E. General Administrative Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 139.550, 139.560, 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 160.613-160.617, 209.160, 224.01-310(1), 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120.

STATUTORY AUTHORITY: KRS 131.130(3)

EFFECTIVE: February 11, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; [~~and~~]
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(5) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; [~~and~~]
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(6) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; and
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use taxes, consumer's use, motor vehicle tire fee, [~~and~~] transient room, and limited liability entity [~~rental~~] tax accounts.

(8) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation, sales and use taxes, consumer's use, motor vehicle tire fee, [~~and~~] transient room, and limited liability entity [~~rental~~] tax accounts.

(9) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing" shall be used by individuals to request receipt of copies of ordinary administrative regulations filed with the Legislative Research Commission by the Department of Revenue.

(10) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(11) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(12) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectibility or doubt as to liability.

(13) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(14) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at

three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(15) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(16) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(17) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(18) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(19) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(20)[~~(18)~~] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(21)[~~(19)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(22)[~~(20)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", shall be presented to anyone who requests to have the Department of Tax subordinate its lien position to a new mortgage.

(23)[~~(21)~~] Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property can be sold.

(24)[~~(22)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(25)[~~(23)~~] Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer or LLC Manager ", shall be presented to the corporate officers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers.

(26)[~~(24)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(27)[~~(25)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(28)[~~(26)~~] Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(29)[~~(27)~~] Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(30)[~~(28)~~] Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(31)[~~(29)~~] Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(32)[~~(30)~~] Revenue Form 12A513, "Corporation Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state.

(33)[~~(31)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(34)[~~(32)~~] Revenue Form 12A517, "Notice of State Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(35)[~~(33)~~] Revenue Form 12A518, "Certificate of Release of Tax Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(36) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(37)[~~(34)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(38)[~~(35)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(39)[~~(36)~~] Revenue Form 12A639, "Statement of Financial Condition for Business", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(40)[~~(37)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(41)[~~(38)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(42) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(43)[~~(39)~~] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(44) Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(45)[~~(40)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(46)[~~(41)~~] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(47)[~~(42)~~] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(48)[~~(43)~~] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the taxpayer and the auditor to acknowledge payment of taxes determined to be tentatively due at the time of an audit.

(49)[~~(44)~~] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(50)[~~(45)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax

and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(51)[~~(46)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(52)[~~(47)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(53)[~~(48)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(54)[~~(49)~~] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(55)[~~(50)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", shall be used as instructions for taxpayers who submit tax records in an electronic format.

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

(a) Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January, 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January, 2008 [~~August, 2005~~];

(d) Revenue Form 10A100, "Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(e) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", March, 2007 [~~August, 2006~~];

(f) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", March, 2007 [~~November, 2006~~];

(g) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(h) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(i) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing", August, 2003;

(j) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", December, 2007 [~~October, 2006~~];

(k) Revenue Form 12A012, "Receipt of Seized Property", November, 2006;

(l) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", August, 2004;

(m) Revenue Form 12A104, "Notice of Seizure", October, 1982;

(n) Revenue Form 12A107, "Notice of Sale", January, 2000;

(o) Revenue Form 12A109-1, "Release of Bank Levy", September, 2004;

(p) Revenue Form 12A109-2, "Release of Levy", January, 2000;

(q) Revenue Form 12A109-3, "Release of Levy", January, 2008;

(r) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September, 2004;

(s) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January, 2008;

(t)[~~(r)~~] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June, 2006;

(u)[~~(s)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June, 2006;

(v)[~~(t)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October, 2006;

(w)[~~(u)~~] Revenue Form 12A503, "Application for Specific Lien Release", October, 2006;

(x)[~~(v)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June, 2003;

(y)[~~(w)~~] Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer or LLC Manager", June, 2003;

(z)[~~(x)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June, 2003;

(aa)[~~(y)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November, 2006;

(bb)[~~(z)~~] Revenue Form 12A508-1, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(cc)[~~(aa)~~] Revenue Form 12A508-2, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(dd)[~~(bb)~~] Revenue Form 12A508-3, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(ee)[~~(cc)~~] Revenue Form 12A508-4, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(ff)[~~(dd)~~] Revenue Form 12A513, "Corporation Nexus Questionnaire", October, 2006;

(gg)[~~(ee)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(hh)[~~(ff)~~] Revenue Form 12A517, "Notice of State Tax Lien", October, 2004;

(ii)[~~(gg)~~] Revenue Form 12A518, "Certificate of Release of Tax Lien", January, 2008 [~~October, 2004~~];

(jj) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January, 2008;

(kk)[~~(hh)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals", July, 2004;

(ll)[~~(ii)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", August, 2004;

(mm)[~~(jj)~~] Revenue Form 12A639, "Statement of Financial Condition for Businesses", August, 2004;

(nn)[~~(kk)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August, 2004;

(oo)[~~(ll)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September, 2004;

(pp) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January, 2008;

(qq)[~~(mm)~~] Revenue Form 12B020, "Notice of Levy", September, 2004;

(rr) Revenue Form 12B020-2, "Notice of Levy", January, 2008;

(ss) [~~(nn)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", October, 2006;

(tt)[~~(oo)~~] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December, 2006;

(uu)[~~(pp)~~] Revenue Form 31A001, "Vendor Contact Authorization", July, 2006;

(vv)[~~(qq)~~] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July, 2006;

(ww)[~~(rr)~~] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July, 2006;

(xx)[~~(ss)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July, 2006;

(yy)[~~(tt)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July[~~March~~], 2006;

(zz)[~~(uu)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July, 2006;

(aaa)[~~(vv)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", May, 1985;

(bbb)[~~(ww)~~] Revenue Form 31A725, "Statute of Limitations Agreement", July, 2006; and

(ccc)[~~(xx)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", June, 2006 [~~July, 2005~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street [~~200 Fair Oaks Lane~~], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

WILLIAM M. COX, Sr., Commissioner
APPROVED BY AGENCY: February 8, 2008
FILED WITH LRC: February 11, 2008 at 4 p.m.
CONTACT PERSON: R. Mack Gillim, Executive Director, Office of Processing and Enforcement, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40620, phone (502) 564-3228, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: R. Mack Gillim
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.
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 corrects the existing regulation to add new or update existing Department of Revenue forms.
(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change to existing forms must result in an amendment of the associated regulation to keep it current.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.
(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 actions will have to be taken by the taxpayers or local governments to comply with 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): There would be no cost incurred by the taxpayer or local government.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and instructions will enable taxpayers to comply with tax laws.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.
(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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: This administrative regulation does not require an increase in fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.
(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

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 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 131.130(3)
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 expenditures or revenue for the Commonwealth or local government agency.
(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.
(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.
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(New Administrative Regulation)

503 KAR 1:190. Certified Court Security Officers training academy.

RELATES TO: KRS 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Commissioner of the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training Certified Court Security Officer training academy and for maintenance of training records.

Section 1. Training Academy Graduation Requirements. To graduate from the department's certified court security officer training academy, a trainee shall:

(1) Successfully complete a minimum of eighty (80) hours of training, based upon the curriculum approved by the council in accordance with KRS 15.3975 and 503 KAR 1:090;

(2) Attain a seventy (70) percent overall score on the firearms qualification and written final examination. A trainee who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training;

(3) Pass the Defensive Tactics practical examination, with no major errors, for which a pass or fail designation is assigned. A trainee who does not pass the Defensive Tactics practical examination shall be considered to have failed basic training; and

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Failure and Repetition of the Training Academy. (1) A trainee that is removed from the academy due to failure shall:

(a) Be required to repeat the entire course; and

(b) Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(2) In accordance with 503 KAR 3:030, Section 6(2), the trainee's employing agency shall prepay to the department the full tuition, room, and board costs of repeating the academy. The employing agency may recover these costs of repeating the course from its trainee.

Section 3. Training Subjects. (1) The Training Academy shall be divided into fourteen (14) different training areas on the following subjects:

(a) Orientation;
(b) Introduction to Court Security Officer;
(c) Domestic terrorism;
(d) Court disturbances;
(e) Disguised weapons;
(f) Interference with judicial administration;
(g) Family security survey;
(h) Role of the sheriff;
(i) Courtroom protocol;
(j) Protecting the integrity of the jury;
(k) Crowd control;
(l) Bomb threats;
(m) Transporting prisoners;
(n) Specialized equipment;
(o) Use of force;
(p) Search and seizure;
(q) The criminal justice system;
(r) High risk trial planning;
(s) Introduction to defensive tactics;
(t) Ethical standards;
(u) Warrants and civil documents;
(v) Arrest of persons;
(w) Force continuum;
(x) Interpersonal communications;
(y) Firearms lecture;
(z) Firearms range;
(aa) Firearms qualification;
(bb) Firearms Decision Making (F.A.T.S.);
(cc) Practical test skill techniques;
(dd) Written test and class critique.

(2) If a trainee is unable to complete basic training, but legally entitled to complete the unfinished tested modules of the course, the trainee shall restart at the beginning of the module which he or she was in when the trainee left basic training.

Section 4. Examinations. (1) A trainee shall be examined and shall achieve the minimum score in each of the following three (3) areas:

(a) Firearms qualification - Seventy (70) percent;

(b) Written final examination - Seventy (70) percent;

(c) Defensive tactics practical examination - Pass, with no major errors.

(2) A trainee shall be permitted one (1) reexamination in each of the three (3) areas.

(3) A trainee who fails an examination, may request a reexamination not later than ten (10) days after the original examination.

(4) A trainee will not receive a certificate of completion until all tested areas are passed.

Section 5. Absence. (1) A trainee may have excused absences from the course with approval of the director of the certified school or his designee;

(2) An excused absence from the course which causes a trainee to miss any of the eighty (80) hours of basic training shall be made up through an additional training assignment;

(3) A trainee shall not be allowed excused absences for more than eight (8) hours of the hours of the academy. If a trainee misses more than eight (8) hours, he or she shall removed from the academy and reenrolled for a subsequent academy class in accordance with Section 6 of this administrative regulation.

Section 6. Circumstances Preventing Completion of the Training Academy. (1) If a trainee is prevented from completing the Training Academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he or she shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a trainee is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the trainee shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 7. Termination of Employment while Enrolled. If, while enrolled in the Training Academy, a trainee's employment as a Certified Court Security Officer is terminated by dismissal and he or she is unable to complete the course, he or she shall complete the remaining training within one (1) year of reemployment as a certified court security officer. The trainee shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the basic training course.

Section 8. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall notify the council of each trainee who has successfully completed the course.

(2) All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

LARRY BALL, Executive Director
For WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: February 6, 2008
FILED WITH LRC: February 6, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008 at 9 a.m. in Room 211, Funderburk Building, Kit

Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2008, 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 March 31, 2008. 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Certified Court Security Officer training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 15.3975 and to establish the curriculum that will be taught to those attending the training academy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15.3975(1) requires a court security officer hired after June 26, 2007 to complete at least 80 hours of training developed and approved by the Kentucky Law Enforcement Council and Administrative Office of the Courts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.3975 requires that all court security officers complete training established by the Kentucky Law Enforcement Council. This regulation sets clear and reasonable training requirements for all who attend the certified court security officer training academy conducted by the Department of Criminal Justice Training.

(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: 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 regulation will affect every one of the 120 county sheriffs' offices that choose to hire persons for the position of Certified Court Security Officer.

(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 agencies should not have to take any actions. This administrative regulation relates only to the training curriculum for the trainees that attend the Certified Court Security Officers training academy. Similar requirements are already in place for those who attend law enforcement basic training and the telecommunications academies at the Department of Criminal Justice Training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance should not cost anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sheriffs' offices will receive well-trained court security officers who are able to perform court security duties as professionals.

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

(a) Initially: The current cost to train, feed, and house a trainee at the Department of Criminal Justice Training is $1,520 per week. There are 24 court security officers registered to attend the first class and DOCJT has scheduled nine training academies this year. It is estimated that it will cost DOCJT approximately $656,640 this year if each scheduled class is conducted and filled to capacity.

(b) On a continuing basis: This cost should remain the same for trainees attending the academy in the future.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect county sheriffs' offices whose court security officers must be certified. Court security officers are required to attend a two week training academy and must abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1) and (5), and 15.15.3975(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only effect that is expected on expenditures of county sheriffs' offices is the salary that they will pay a court security officer while he or she is in training. It should have no effect on revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Under KRS 15.3975(1), the training for court security officers has been increased to 80 hours from the old 32 hour training program. It will cost the Department of Criminal Justice Training approximately $1,520 weekly per trainee. There will be 24 court security officers in the first academy class and DOCJT has nine other courses scheduled for 2008. Therefore it is estimated that it will cost DOCJT approximately $656,640 this year if each schedule class is conducted and filled to capacity.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to be about the same as in the first year.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

11 KAR 5:200. Go Higher Grant Program.

RELATES TO: KRS **164.740,**164.744(2), 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation establishes application procedures and selection criteria for the administration of the Go Higher Grant Program.

Section 1. Definitions. (1) "Demonstrated financial need" means an expected family contribution (EFC) of no more than 150% of the **CAP Grant**[~~federal Pell~~] Grant EFC as set forth in 11 KAR 5:145, Section 1 [~~documented eligibility to receive federal Pell Grant funds~~].

(2) "Eligible institution" is defined by KRS 164.740(3).

(3) "Eligible student" is defined by KRS 164.740(5).

(4) "Half-time enrollment" means enrollment in a minimum of six (6) hours of course work.

Section 2. Eligibility Criteria. In order to be eligible to receive grant funds under this program, an individual shall:

(1) Be age twenty-four (24) or older by July 1 prior to the start of the first term during which the award will be used;

(2) Be enrolled at an eligible institution;

(3) Have enrollment of less than half-time during the first semester in which the grant is awarded;

(4) [~~Not have been previously enrolled in a postsecondary institution;~~

~~(5)~~] Have demonstrated financial need;

(5)[~~(6)~~] Be a Kentucky resident;

(6)[~~(7)~~] Be a U.S. citizen, national or permanent resident; and

(7)[~~(8)~~] Not be **incarcerated at either the time of application or receipt of an award**[~~currently incarcerated~~][~~have been convicted of a felony~~].

Section 3. Application Procedure. (1) In order for an eligible student to be considered for an award under this program, the student shall complete:

(a) The Go Higher Grant Program Application available through the Authority; and

(b) The Free Application for Federal Student Aid (FAFSA) as required by 11 KAR 4:080, Section 2.

(2) The priority deadline for applications shall be July 1. Applications shall be accepted after that date with awards made until funds are exhausted.

Section 4. Awards. (1) An eligible student recipient shall receive an award under this program for only one (1) academic year.

(2) The maximum award amount under this program shall be $1,000 per recipient.

(3) The amount of the award under this program for the first semester of the recipient's enrollment shall be equal to:

(a) The cost of tuition at the participating institution, not to exceed the maximum award amount; and

(b) A book allowance of fifty (50) dollars per credit hour of enrollment, not to exceed the maximum award amount.

(4) The amount of the award under this program for the second semester of the recipient's enrollment, if any, shall be equal to the difference between the maximum award amount under this program and the amount received during the recipient's first semester of enrollment up to the cost of tuition and book allowance.

(5) In making awards under this program, priority shall be given to eligible applicants who have received a General Education Development (GED) Certificate.

Section 5. Disbursement Procedures. (1) Grant funds shall be disbursed by the authority to the participating institution in the form of a single check, made payable to the participating institution, or by electronic funds transfer delivered to the participating institution for subsequent delivery for application to the account of the award recipient.

(2) Within thirty (30) days following receipt of the eligibility verification file, the disbursement of grant funds by the authority to the participating institution shall be made for subsequent application to the account of the award recipient.

Section 6. Reporting and Repayment Requirements. (1) The school shall verify enrollment to the Authority after the time for adding or dropping classes at the institution has passed.

(2) If a grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over-award and a full refund or repayment of the award shall be required.

(3) If the institution is unable to document the student's last date of attendance, any grant disbursement for that award period shall be subject to full refund and repayment.

(4) If, at any time, a grant recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full grant award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

(5) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(6) If a refund is due from the participating institution or a repayment is due from a student, the participating institution shall transmit to the authority the refund and shall report:

(a) The student's name and Social Security number;

(b) The reason for the refund or repayment;

(c) The date of enrollment status change;

(d) The academic term and award period; and

(e)The calculation used for determining the refund or repayment.

(7) Failure of the institution to make restitution if required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 7. Incorporation by Reference. (1) The "Go Higher Grant Program Application", December 2006, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS **164.740,** 164.744(2), 164.753(3), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).
(2) "Critical shortage area" is defined in KRS 164.769(2)(a).
(3) "Eligible program of study" is defined in KRS 164.769(2)(b).
(4) "Expected family contribution" is defined in KRS 164.769(2)(c).
(5) "Kentucky Teacher Internship Program **or "KTIP"**[~~(KTIP)"~~] means **the one (1) year of supervision, assistance, and assessment that is:**
(a) Required by KRS 161.030 and established in 16 KAR 7:010; and
(b) Also referenced as the beginning teacher internship[~~"beginning teacher internship" as defined in 16 KAR 2:010, Section 1(4)~~].
(6) "Participating institution" is defined in KRS 164.769(2)(d).
(7) "Professional Teaching Certificate" **means the document issued to:**
(a) An individual upon successful completion of the beginning teacher internship; or
(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments[~~is defined in 16 KAR 2:010, Section 1(9)~~].
(8)[~~(6)~~] "Public school" means the common schools of the commonwealth providing preschool, elementary, middle school, or secondary instruction.
(9)[~~(7)~~] "Qualified teaching service" is defined in KRS 164.769(2)(e).
(10)[~~(8)~~] "Semester" is defined in KRS 164.769(2)(f).
(11)[~~(9)~~] "Summer term" is defined in KRS 164.769(2)(g).
(12)[~~(10)~~] "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and **shall**[~~does~~] not include substitute teaching. [~~as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.~~]

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.
(2) Eligibility of renewal applicants.
A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.
(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:
(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.
(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.
(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.
(2) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).
(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).
(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, postbaccalaureate or master's degree will be completed shall be:
(a) $210 per credit hour if the student is enrolled during a regular semester; or
(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.
(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.
(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.
(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.
(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.
(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for

whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 11[~~10~~] of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

Section 7. Disability Discharge. A conditional or permanent discharge of the repayment obligation **required by**[~~under~~] this program shall be granted by the Authority upon submission by the recipient of the [~~appropriate~~]documentation **required by this section.**

(1) Conditional discharge. A conditional discharge shall be granted for **maximum** a two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:[~~.~~]

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 8. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 9.[~~8.~~] Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 10[~~9.~~] Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 11.[~~10.~~] Refunds. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the au-

thority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 12.[~~11.~~] Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 13. Incorporation by Reference. (1)[~~"Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.~~

~~(a)~~]"Teacher Scholarship Program Application for Discharge", November 2007, **is incorporated by reference**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended ARRS, February 11, 2008)

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

RELATES TO: KRS **164.740,** 164.744(2), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.769(6)(f) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

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

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

(4) "Kentucky Teacher Internship Program **or "KTIP"**[~~(KTIP)"~~] means **the one (1) year of supervision, assistance, and assessment that is:**

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship [~~"beginning teacher internship" as defined in 16 KAR 2:101, Section 1(4)~~].

(5) "Participating institution" is defined in KRS 164.769(2)(d).

(6) "Professional Teaching Certificate" **means the document issued to:**

(a) An individual upon successful completion of the beginning teacher internship;

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessment[~~is defined in 16 KAR 2:010, Section 1(9)~~].

(7)[~~(5)~~] "Qualified teaching service" is defined in KRS 164.769(2)(e).

(8)[~~(6)~~] "Semester" is defined in KRS 164.769(2)(f).

(9)[~~(7)~~] "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and **shall**[~~does~~] not include substitute teaching. [~~as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.~~]

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

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

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

(c) "Teacher Scholarship Program Request For Disability Deferment"; [~~or~~]

(d) "Teacher Scholarship Program Request For Hardship Deferment"; or

(e) "Teacher Scholarship Program Request For Alternative Certification Deferment"; or

(f) "Teacher Scholarship Program [~~Request For~~] Military Service Deferment **Request"**.

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

Section 3. Effect on Repayments. (1) During a deferment, principal or interest repayments shall not be required. Interest shall:

(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1), (3), (4), or (5)[~~(3)~~] of this administrative regulation; and

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

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

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

Section 4. Types of Deferments. If the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment, alternative certification deferment, or qualified teaching service deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be a deferment granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States.

(b) Each semester, the recipient shall provide to the authority evidence of the enrollment on the "Teacher Scholarship Program Request for School Enrollment Deferment" form.

(c) The Authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of either:

1. Forty-eight (48) months for a recipient enrolled in a baccalaureate program; or

2. Sixty (60) months for a recipient enrolled in a graduate program.

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

(a) Disability deferment.

1. A disability deferment shall be a deferment granted to a recipient who is:

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

b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:

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

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

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

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

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

5. After the third year of a disability deferment, the authority may cancel the debt if it appears that the disability is expected to continue for an indefinite time.

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

1. Be eligible to begin the Kentucky Teacher Internship Program established in KRS 161.030(5) and 16 KAR 7:010;

2. Have applied for a qualified teaching service position with at least three (3) state-accredited school districts **in Kentucky**;

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

4. Provide the authority with a signed statement which sets forth:

a. The recipient's current address;

b. The names of state-accredited school districts to which the recipient has applied for qualified teaching service employment; and

c. The recipient's agreement to notify the authority if the recipient obtains full-time employment in a qualified teaching service position.

(c) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

1. Enrollment in a teacher education program or employment in a qualified teaching service position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient intends to resume the enrollment or qualified teaching position; or

2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Alternative certification deferment.

(a) A deferment shall be granted to a recipient who has received a provisional certification by the Kentucky Education Professional Standards Board (EPSB) under one (1) of the alternative routes to teacher certification established by the EPSB in 16 KAR Chapter 9.

(b) The deferment shall be granted for up to thirty-six (36) months in order to allow sufficient time for the recipient to complete the Kentucky Teacher Internship Program and to obtain professional teaching certification.

(5) Qualified teaching service deferment.

(a) A deferment shall be granted to a recipient who, due to current employment in a qualified teaching service position, may reasonably be expected, solely with the passage of six (6) months or less time, to qualify for cancellation benefits pursuant to 11 KAR 8:030.

(b) The authority shall grant a deferment of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:

1. The recipient received loans or scholarships from more than one (1) program that:

a. Is administered by the authority; and

b. Required a period of qualified teaching service for repayment or cancellation; and

2. The recipient is either:

a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or

b. Performing qualified teaching service to fulfill the other program's requirements.

Section 5. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Teacher Scholarship Program Request For School Enrollment Deferment", March 2002;

(b) "Teacher Scholarship Program Request For Unemployment Deferment", March 2002;

(c) "Teacher Scholarship Program Request For Disability Deferment", March 2002; [~~and~~]

(d) "Teacher Scholarship Program Request For Hardship Deferment", March 2002;

(e) "KHEAA Teacher Scholarship Program **Request for** Alternative Certification Deferment[~~Request~~]", November 2007; and

(f) "KHEAA Teacher Scholarship Program Military Service Deferment Request", November 2007.

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DR. SARAH LAWS, Chair

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment.

RELATES TO: KRS 164.740, 164.7891

STATUTORY AUTHORITY: KRS 164.7891(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

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

(3) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(4) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(5) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. Request for Deferment. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive from a third-party verification of facts represented by the recipient.

Section 3. Effect on Repayment. (1) During a deferment:

(a) A principal or interest repayment shall not be required; and

(b) Interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(4)[~~(3)~~] of this administrative regulation.

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

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation shall subsequently be cancelled in accordance with KRS 164.7891(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. The authority shall grant deferment of repayment for a period of twelve (12) months[~~one (1) year~~], not to exceed an aggregate of thirty-six (36) months, excluding military service deferment **or an**[~~and~~] internship and residency deferment, for the [~~following~~] circumstances **described in this section**:

(1) Disability deferment.

(a) A deferment may be granted to an osteopathic medicine scholarship recipient who is:

1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or

2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.

(b) For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

(c) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the requirements established in paragraph (b) of this subsection. The recipient shall be solely responsible for securing the physician's certification and ensuring that it is received by the authority.

(d) If the deferment is granted for a period of less than one (1) year at a time, the deferment shall be subject to periodic review of a physician's certification every six (6) months.

(e) After the third year of a recipient's deferment, pursuant to this subsection, the authority shall cancel the debt if it reasonably appears to the authority based on the certification of a licensed physician other than the scholarship recipient that the scholarship recipient is totally disabled and the disability is expected to be permanent and continue to preclude the scholarship recipient's school attendance and employment for an indefinite time.

(2) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

(a) Enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including natural disaster or death in the family, after which the recipient intends to resume the enrollment or qualified service position; or

(b) The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(c) This deferment shall:

1. Be granted for a period of less than one (1) year; and

2. [~~Not exceed an aggregate of twelve (12) months; 3.~~] Be subject to periodic review of documentation every six (6) months.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Internship and residency deferment.

(a)1. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in a single American Osteopathic Association approved rotating internship in osteopathic medicine prior to beginning practice in osteopathic medicine.

2. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in:

a. A single American Osteopathic Association approved residency program in a qualified field; or

b. the Family Practice plus One year Neuromuscular Medicine (FP+1) residency program.

(b) The recipient shall submit to the authority verification that he is enrolled in the internship or residency program, the start date, and anticipated end date of the internship or residency from the hospital, clinic, or other institution where the internship or residency is being performed.

(c) This verification shall contain the following information:

1. The recipient's name, Social Security number, current home address, and telephone number;

2. The name and address of the hospital, clinic, or other institution where the internship or residency is being performed;

3. The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's internship or residency program; and

4. The expected date that the internship or residency program will be completed.

(d) A recipient whose period of obligated service has been deferred under this subsection shall begin full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in a qualified field immediately following the completion of the initial residency period and licensure to practice osteopathic medicine in the Commonwealth of Kentucky.

DR. SARAH LAWS, Chair

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

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

RELATES TO: KRS 164.518**, 164.740**

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) "Capstone semester" means the culmination semester in an Interdisciplinary Early Childhood Education (IECE)/Early Childhood Program which:

(a) requires additional hours of direct work with children; and

(b) may be listed as student teaching or a practicum.

(5) "Early childhood facility" means:

(a) A licensed Type I or a Type II **child-care center**[~~day care facility~~] defined in 922 KAR **2:110, Sections 1(14) and (15)**[~~2:001~~] that is located in Kentucky;

(b) A certified family child care home pursuant to KRS 199.8982 and 922 KAR 2:100 that is located in Kentucky;

(c) An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development; or

(d) A developmentally appropriate preschool program defined in KRS 157.3175(2).

(6) "ECDA" means Early Childhood Development Authority.

(7) "ECDA-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate degree in early childhood education or baccalaureate degree in interdisciplinary early childhood education, or a related program that is approved by the Early Childhood Development Authority; or

(b) The Kentucky Early Childhood Development Director's Certificate.

(8) "Eligible institution" is defined in KRS 164.740(3).

(9) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(10) "Participating educational institution" means an eligible institution located in Kentucky that:

(a) Actively participates in the federal Pell Grant Program;

(b) Offers a scholarship program curriculum;

(c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and

(d)1. Is publicly operated; or

2.a. Is licensed by the Commonwealth of Kentucky;

b. Has operated for at least ten (10) years;

c. Offers a program of study not comprised solely of sectarian instruction; and

d. Admits as regular students only:

(i) High school graduates;

(ii) Recipients of a general equivalency diploma; or

(iii) Students transferring from another accredited degree granting institution.

(11) "Preschool associate teacher" means a classified employee who:

(a) Is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional; and

(b) Meets the requirements of 704 KAR 3:420.

(12) "Professional development counselor" means an individual [~~employed by a regional child-care resource and referral agency~~] with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.

(13) "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(14) "Scholarship" means an Early Childhood Development Scholarship.

(15) "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(16) "Teaching assistant" means an instructional aide in a public school preschool program as set forth in 704 KAR 3:410.

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify

for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;

2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3. A high school graduate or a General Educational Development (GED) recipient;

4. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:

a. Employed at least twenty (20) hours per week in a participating early childhood facility;

b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or

c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;

5.[~~4.~~]a. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;

b. An applicant who is enrolled in the final semester of study before earning an ECDA-approved early childhood [~~development~~] credential, associate degree, or bachelor's degree may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;

6.[~~5.~~] Pursuing an ECDA-approved

a. Early childhood [~~development~~] credential;

b. Associate degree; or

c. Bachelor's degree.

7.[~~6.~~] Ineligible to receive professional development funds from another education program; and

8.[~~7.~~] Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(c) Not be:

1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

2. Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

3. Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood[~~development~~] credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.

(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.

(c) If a student appeals a scholarship denial, the ECDA shall ensure that:

1. A hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved; and

2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.

(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:

(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;

(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood[~~development~~] credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or

(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood[~~development~~] credential of a baccalaureate degree, paid for in part by a scholarship.

Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application set forth in 11 KAR 4:080, Section 1(4)(b), from the KHEAA Web site, www.kheaa.com/prog_ecds.html. The applicant shall complete the on-line application.

(2) The applicant shall:

(a) Print the employer verification page from the completed application;

(b) Have this page certified by an authorized representative of the participating early childhood facility; and

(c) Submit the certified page to the professional development counselor on or before:

1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a). This application shall be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA no later than:

(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECDA no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECDA shall certify the eligibility determination of approved

applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:

(a) The amount of tuition charged for enrollment in nine (9) credit hours; and

(b) The award maximum.

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be $1,800.

DR. SARAH LAWS, Chair

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 11, 2008)

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

Section 1. Textbook Expense Reimbursement. (1) The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer no[~~not~~] later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(2) The participating early childhood facility shall, no later than fifteen (15) days after presentation of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and $150 per academic year.

(3) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

Section 2. Related Educational Expense Reimbursement. (1) The scholarship recipient shall earn a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term to be eligible for reimbursement of related educational expenses. Related educational expense reimbursement shall be provided only to the extent funds are available.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term.

(3) The amount of the related educational expense reimbursement shall be:

(a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's credential at a participating educational institution; or

(b) $100 to a scholarship recipient pursuing an ECDA-approved early childhood development credential, **pursuing** other than a child development associate's, or an ECDA-approved associate or bachelor's degree credential.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the determination of eligibility for the reimbursement of related educational expenses and the amount of the award.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services [~~in the Division of Child Care~~] of the Cabinet for Health and Family Services[~~Families and Children~~] a list of eligible recipients of reimbursement of related educational expenses. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and

2. The amount of the reimbursement of related educational expenses earned by the recipient.

(b) The Cabinet for Health and Family Service[~~Families and Children~~] shall remit to the award recipient the earned reimbursement of related educational expenses specified in subsection (3) of this section.

Section 3. Milestone Achievement Award. (1) The scholarship recipient shall present to the professional development counselor and to the participating early childhood facility no[~~not~~] later than sixty (60) days following completion of the academic term evidence of earning the ECDA-approved early childhood development credential or degree to be eligible to receive a milestone achievement award. Milestone achievement award reimbursement shall be provided only to the extent funds are available.

(2) Evidence of earning the ECDA-approved early childhood development credential or associate or bachelor's degree shall be:

(a) The certificate for the Commonwealth Child Care Credential, the Child Development Associate Credential, or the Kentucky Early Childhood Development Director's Credential;[~~The certificate for the child development associate's credential;~~] or

(b) The diploma or official transcript from the participating educational institution for an ECDA-approved early childhood associate or bachelor's degree. [~~development credential other than a child development associate's credential.~~]

(3) The milestone achievement award amount shall be:

(a) $100 for earning the Commonwealth Child Care Credential [~~ECDA initial credential~~] in an early childhood development program approved by the ECDA;

(b) $250 for earning an initial[~~a~~] child development associate's credential;

(c) $300 for earning an initial associate degree in early childhood education or other program approved by the ECDA, or the Kentucky Early Childhood Development Director's Credential [~~Certificate~~]; or

(d) $500 for earning an initial [~~a~~] baccalaureate degree in interdisciplinary early childhood education or other program approved by the ECDA.

(4) The professional development counselor, no[~~not~~] later than thirty (30) days after considering whether the scholarship recipient is eligible to receive a milestone achievement award, shall notify the scholarship recipient in writing of the determination of eligibility for the milestone achievement award and the amount of the award.

(5)(a) No later than fifteen (15) days following receipt of the document specified in subsection (2) of this section, the participating early childhood facility that employs the scholarship recipient at the time the scholarship recipient earns the ECDA-approved early childhood [~~development~~] credential or degree shall remit to the scholarship recipient by [~~certified~~] check ten (10) percent of the earned milestone achievement award specified in subsection (3) of this section.

(b) The participating early childhood facility shall send to the professional development counselor a copy of the check as evidence that the participating early childhood facility has paid the

scholarship recipient in accordance with paragraph (a) of this subsection.

(6)(a) After determination of eligibility and evidence of payment by the participating early childhood facility of the milestone achievement award, the professional development counselor shall transmit to the Department for Community Based Services[~~in the Division of Child Care~~] of the Cabinet for Health and Family Services[~~Families and Children~~] a list of eligible recipients of the milestone achievement award. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and

2. The amount of the milestone achievement award earned by the recipient.

(b) The Cabinet for Health and Family Services[~~Families and Children~~] shall remit to the award recipient ninety (90) percent of the earned milestone achievement award specified in subsection (3) of this section.

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GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
Office of Kentucky Veterans Centers
(As Amended at ARRS, February 11, 2008)

17 KAR 3:030. Drug testing procedures at Kentucky Department of Veterans Affairs state Veterans nursing homes.

RELATES TO: 41 U.S.C. 701-707

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate **veterans' nursing**[~~the~~] homes in compliance with applicable state and federal **statutes**[~~statues~~] and regulations. This administrative regulation establishes procedures that will ensure state veteran nursing homes [~~will~~]comply with KRS 18A.043 and 41 U.S.C. 701-707, through drug testing of [~~those state nursing home~~] employees caring for veteran residents and children within state veteran nursing home child care centers.

Section 1. Definitions. (1) "Administrator" means the person in charge of a Kentucky Veterans Center, or that person's specific designee.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Commissioner, Kentucky Department of Veterans Affairs or the Commissioner's designee.

(4) "Controlled substance" is defined in KRS 218A.010.

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Kentucky Department of Veterans Affairs.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Drug" is defined in KRS 218A.010.

(9) "Initial test" or "screening test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(10) "Kentucky Veterans Center" means a state veterans nursing home operated by the Kentucky Department of Veterans Affairs and includes the Eastern Kentucky Veterans Center in Hazard, the Western Kentucky Veterans Center in Hanson, and the Thomson-Hood Kentucky Veterans Center in Wilmore.

(11) "On duty" means being engaged in or on-call to be engaged in, the performance of work responsibilities for the employer.

(12) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and rationally-derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his or her training or life experiences, to suspect that a KDVA employee has been using illegal drugs, controlled substances, prescription or nonprescription medication, or alcohol in violation of this administrative regulation.

(13) "Refusal to submit to a drug test" means the following:

(a) Failing to provide an adequate urine sample without an adequate medical explanation;

(b) Engaging in conduct that obstructs the testing process; or

(c) Refusing to be tested.

(14) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.

(15) "Serious work accident" means any on-duty accident or incident resulting in personal injury or death to any person.

(16) "Specimen" means the portion of urine that is collected from a donor.

(17) "Support services" means positions that do not provide direct resident or child care and includes employees in the fields of maintenance, dietary services, social services, recreational services, and administrative services.

(18) "Test-designated employee" means an individual employed at a KDVA Veterans Center who [~~meets any of the following conditions~~]:

(a) Provides care, treatment, or support services to a resident of the facility; **or**

(b) Provides care, supervision, or support services to a child or to children **in**[~~of~~] a childcare center located in a KDVA Veterans Center.

Section 2. Applicability. (1) The Department shall develop and implement test-designated employee drug testing procedures subject to the approval of the appointing authority.

(2) This administrative regulation applies to test-designated position applicants and test-designated position employees.

(3) This administrative regulation applies to drug testing conducted under the authority of KRS 40.325 to carry out the requirements of 18A.043 and 41 U.S.C. 701-707 regarding a drug-free workplace.

(4) Coordination of state and federal administrative regulations. This administrative regulation shall also apply to an employee subject to mandatory federal regulations governing drug testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which:

(a) It is not possible to comply with both this administrative regulation and the federal regulation; or

(b) Compliance with this administrative regulation is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

Section 3. Prohibited Behavior. The following activities are prohibited while on duty or on KDVA Veteran Center grounds:

(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of any controlled substance;

(2) Consuming or **being** under the influence of illegal drugs, [~~of~~] drugs illegally obtained, or [~~consuming or under the influence of~~] alcoholic substances;

(3) The use, misuse, or abuse of prescription or nonprescription medication in a quantity sufficient to impair a test-designated employee's ability to perform assigned duties or in any way **place** [~~places~~] patient or fellow employee safety at risk; or

(4) Interfering with any testing procedure or tampering with any test sample.

Section 4. Testing of Test-Designated Employees. (1) An applicant for a test-designated position, as a condition of continued employment, **shall**[~~to~~] be subject to a drug test as provided in this administrative regulation.[~~The appointing authority shall require~~]

(2) The Department shall establish and have operational the

test-designated employee drug testing procedures as provided in this administrative regulation within 120 days **of the effective date**[~~following the adoption~~] of this administrative regulation.

(3) Tests authorized. The following tests shall be authorized:

(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.

(b) Preappointment testing. An applicant being considered for a test-designated position shall submit to and pass a drug test prior to being appointed to **the**[~~a test-designated~~] position.

(c) Postaccident testing. A test-designated employee shall submit to a drug test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.

(d) Random drug testing: A test-designated employee shall submit to a drug test if the employee is selected as part of the random drug testing component of the KDVA Drug Testing Program.

1. The appointing authority may direct that up to twenty-five (25) percent of the total number of test-designated employees per each KDVA Veterans Center be selected for drug testing each year.

2. Selection shall be done on a purely random basis according to drug testing procedures adopted within 120 days of the **effective date**[~~promulgation~~] of this regulation.

3. Should a test-designated employee be randomly selected more than once per year, that employee **shall**[~~will~~] not [~~have to~~] be tested if the immediate previous testing of that person took place within sixty (60) days of the new random selection date.

(e) Follow-up testing. A test-designated employee shall submit to up to three (3) follow-up drug tests per year at the direction of the appointing authority within one year of any of the following occurrences:

1. The employee's voluntary disclosure of drug problems;
2. Entry into, or completion of a drug rehabilitation program;
3. Employee failure in a pre-appointment drug test or refusal to take a pre-appointment drug test; **or**
4. Any time the employee has been disciplined for violating this regulation.

Section 5. Penalties. (1) Positive test results.

(a) A positive test result shall constitute a violation of this administrative regulation and shall constitute just cause for the appointing authority to discipline the donor, up to and including dismissal, according to applicable laws, regulations, and policies.

(b) The appointing authority shall **notify the donor**[~~specify~~], in writing, **of** the penalty that may be imposed, including any mandatory penalties, for violating this administrative regulation.

(c) An[~~However, an~~] appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for prohibited drugs or otherwise violates this administrative regulation.

(2) Employees selected for a test-designated position. An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following shall occur:

(a) An applicant not presently employed by the Commonwealth shall not be appointed to the test-designated position;

(b) An applicant who is employed by the Commonwealth, but is being considered for promotion to or otherwise appointment to the test-designated position, shall not be promoted or otherwise appointed to that position; **and**

(c) An applicant who is employed by the Department, who fails or refuses to submit to the drug test, shall be subject to disciplinary actions for the failure or refusal.

(3) Self-reporting. A test-designated employee who voluntarily discloses to the appointing authority a problem with drug abuse (controlled substances, illegal substances, or alcohol abuse) shall not be disciplined for the disclosure if it occurs prior to **submitting to a drug test authorized by Section 4(3)(a) through (d) of this administrative regulation**[~~any of the kinds of drug testing outlined above~~] (preappointment, reasonable suspicion, postaccident, or random), but shall be provided an opportunity to take leave to enter a drug rehabilitation program.

(a) **If a**[~~Despite a case where the~~] test-designated employee **self-reports**[~~self-reported~~] drug abuse as stated **in this subsection** [~~above~~], the appointing authority may remove the employee from the care of residents and of children upon receiving the report from the employee.

(b) A test-designated employee **may self-report and avoid**[~~cannot take advantage of Section (3) above, regarding no~~] disciplinary action **only**[~~, more than~~] once during his or her employment.

(c) A self-reporting employee remains subject to all drug testing requirements and other requirements outlined in this regulation.

(4) Federal drug testing programs. Nothing in this administrative regulation shall preclude the appointing authority from implementing a drug-testing program required by federal law.

Section 6. Drugs Included. (1) When a drug test is administered, the department shall, at a minimum, test for:

(a) Marijuana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines;
(e) Phencyclidine;
(f) Morphine;
(g) MDMA (Ecstasy);
(h) Methadone;
(i) Benziodiazepines;
(j) Barbituates; and
(k) Oxycodone.

(2)[~~1.~~] If conducting reasonable suspicion or post-accident drug testing, the department may test for any drug listed in Schedule 1 or 2 as defined in KRS Chapter 218A.

(3)[~~2.~~] Before the department tests for other drugs, it must first obtain approval from the appointing authority.

(4)[~~3.~~] The department or contract agency requesting approval for the testing of other drugs shall submit to the appointing authority the agency's proposed initial test methods, testing levels, and proposed performance test program.

(5)[~~(2)~~] This administrative regulation shall not limit an agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

(6)[~~(3)~~] Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(7)[~~(4)~~] Drug test specimens that meet or exceed the cutoff levels as specified in subsection **(6)**[~~(3)~~] of this section shall be reported as a positive test result and shall constitute a failed drug test.

(8)[~~(5)~~] Drug test specimens that test below the cutoff levels as specified in subsection **(6)**[~~(3)~~] of this section shall be reported as a negative test result and shall constitute a passed drug test. No further testing of a negative specimen for drugs shall be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory's internal quality control program.

Section 7. Test-Designated Employee Drug Testing Procedures. (1) The test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be implemented in accordance with nationally recognized standards as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(2) All costs associated with implementing the test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be borne by the Office of the Kentucky Veterans Center.

(3) The appointing authority shall maintain records concerning all Veterans Center employee drug testing in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(4) Except as required by law or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

(5) An employee subject to testing shall be entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(6) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under the requirements of this administrative regulation or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(7) The appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 8. Test-Designated Employee Notification. (1) New employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.

(2) Current employees shall receive information and training concerning this administrative regulation within the first three (3) months following the **effective date**[~~adoption~~] of this administrative regulation.

(3) Information and training provided pursuant to subsection (2) of this section shall include information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program, as well as how to access these services and supports.

(4) The Personnel Office within each Veterans Center shall maintain documentation that all employees have received information and training concerning this administrative regulation and shall provide a copy of that documentation to the Administrative Branch Manager, Office of Kentucky Veterans Center, who shall coordinate with the Personnel Administrator of the Office of the Commissioner, Frankfort, Kentucky.

(5) All test-designated employees shall sign a document certifying:

(a) Receipt of information and training concerning this administrative regulation;

(b) An understanding of the requirements, limitations, and restrictions on employee conduct contained in this administrative regulation; and

(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Employee Duty to Report Convictions. A test-designated employee shall report to the KDVA headquarters through his or her immediate supervisor any criminal drug statute for which he or she was convicted within five (5) working days of the conviction.

Section 10. Prescription and Nonprescription Medications. (1) A test-designated employee taking a prescription or nonprescription medication prior to or during the work shift shall immediately inform his or her supervisor of this fact if:

(a) The **medication's**[~~instructions~~] indications[~~,~~] and contraindications[~~associated with the medication~~] give the employee reason to believe that the medication may in some way impair work performance; or

(b) Having once taken the medication, the employee begins to experience an unexpected, typical, or adverse reaction to the medication, which impairs work performance.

(2) An employee who fails to comply with subsection (1) of this section shall be subject to disciplinary action up to and including termination of employment.

(3) Having been notified by an employee pursuant to subsection (1) of this section the employee's supervisor shall closely monitor the employee's work performance throughout the employee's work shift. If the supervisor determines that there is a sufficient perceived impairment of the employee's work performance so as to raise concerns related to employee, [~~or~~] resident, or child safety, the supervisor shall notify the administrator concerning the employee's impaired work performance. The administrator shall then conduct an assessment and make a determination regarding the employee's impaired work performance.

(4) If the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work **performance**[~~performances~~] is impaired so as to raise concerns related to employee or resident or child safety, the administrator shall:

(a) Transfer or temporarily assign the employee away from resident care or child care, and to a job function unrelated to such care, provided that the transfer or temporary reassignment does not place the employee or other employees at risk of injury or otherwise jeopardize the orderly operation of the Veterans Center; or

(b) Allow the employee to depart the workplace and use available leave time, taking care to assist the employee if the impairment jeopardizes the safety of the employee or other employees.

(5) The employee shall be allowed to return to regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is not impaired.

Section 11. Incorporation by Reference. (1) "Mandatory Guidelines for Federal Workplace Drug Testing Programs", November 1, 2004 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at The Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 7, 2007 at 9 a.m.

CONTACT PERSON: Dennis W. Shepherd, Staff Attorney, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

ATTORNEY GENERAL
Prosecutors Advisory Council
Asset Forfeiture
(As Amended at ARRS, February 11, 2008)

40 KAR 4:010. Disbursement of asset forfeiture receipts.

RELATES TO: KRS 218A.420(4) [~~218A.435(7)(a)~~]

STATUTORY AUTHORITY: KRS 218A.420(5) [~~218A.435(8)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.420(4)(b) provides that a portion of the proceeds from the sale of property forfeited under KRS Chapter 218A shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney participating in the forfeiture. This administrative regulation establishes the procedure for payment of these moneys and the specific purposes for which these funds shall be expended. [~~218A.435(7)(a) provides that a portion of the asset forfeiture trust fund shall be allocated to the United Prosecutorial System to be disbursed by the Attorney General (through the Prosecutors Advisory Council) to Commonwealth's attorneys or county attorneys. This administrative regulation establishes the application mechanism.~~]

Section 1. Definitions. (1) "Asset forfeiture moneys" means the portion of the proceeds from the sale of property forfeited under KRS Chapter 218A which is paid to the Prosecutor's Advisory Council and deposited on behalf of the Commonwealth's attorney or county attorney whose office participated in the forfeiture as provided under KRS 218A.420(4)(b).

(2) "National Code of Professional Conduct for Asset Forfeiture" means the National Code of Professional Conduct for Asset

Forfeiture attached as Appendix G to the United States Department of Justice's Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement (March 1994) (GPO Ref. No. 1994-301-175/14299).

Section 2. Submission of Asset Forfeiture Moneys. (1) Asset forfeiture moneys paid to a Commonwealth's or county attorney shall be forwarded by the Commonwealth's or county attorney to the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204.

(2) Any asset forfeiture check forwarded to the Prosecutor's Advisory Council shall be accompanied by the following:

(a) A copy of the final order of forfeiture; and

(b) A completed "Submission of Asset Forfeiture Moneys," **form**[~~which is incorporated by reference~~].

(3) Any asset forfeiture moneys submitted to the Prosecutors Advisory Council without the foregoing shall be returned to the Commonwealth's or county attorney within two (2) weeks.

Section 3. Application. Commonwealth's attorneys or county attorneys having asset forfeiture moneys on deposit with the Prosecutors Advisory Council and entitled to expend those monies under KRS 218A.420(4)(b) [~~Commonwealth's attorneys or county attorneys who are entitled to payment under KRS 218A.435(7)(a)~~] shall apply in writing for payment of asset forfeiture proceeds by completing the "Application for Expenditure of Asset Forfeiture Funds," [~~which is incorporated by reference.~~] and submitting it to [~~from the trust fund through~~] the Office of Attorney General, Prosecutors Advisory Council.

Section 4. Use of Asset Forfeiture Moneys. (1) All asset forfeiture moneys paid to a Commonwealth's attorney or county attorney shall be expended for legitimate law enforcement purposes, including[~~but not limited to~~] the following purposes:

(a) Operating expenses directly relating to protracted, extraordinary, or complex prosecution of crimes;

(b) Payment for forensic and other scientific testing of evidence related to criminal prosecution;

(c) The purchase of technical or computer equipment, including telecommunication systems or devices, or expertise related to criminal prosecution, provided that any usage not directly related to criminal prosecution shall be prorated and shall not be paid with any funds allocated by the Prosecutors Advisory Council;

(d) Expenses associated with the conduct of grand jury proceedings;

(e) Payment for continuing legal education and other training relating to criminal justice, including reimbursement for reasonable travel and lodging to attend trainings;

(f) Dues or subscriptions to newspapers, magazines, publications, and organizations providing support services to Commonwealth's and county attorneys, including but not limited to the Kentucky Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the American Prosecutors Research Institute, the Kentucky Association of Counties, the Kentucky Commonwealth's Attorneys Association, the Kentucky County Attorney's Association and the Fraternal Order of Police;

(g) De minimus expenses for refreshments furnished to employees, victims, other witnesses and visitors at the office of the Commonwealth's or County attorney, which are provided as a convenience in the exercise of the prosecution of crimes; and

(h) Programs, communications and advertising, including apparel identifying the office of the Commonwealth's or county attorney, which relates to education, crime prevention and prosecution.

(2) Asset forfeiture moneys provided pursuant to KRS 218A.420(4) shall not be used for the following expenditures:

(a) Civic memberships or charitable contributions unrelated to a legitimate law enforcement purpose;

(b) Payment for personal political advertising or other communications, including items bearing the name, likeness, or logo depicting the candidacy of any person;

(c) Payment for airfare for any class of ticket other than coach or economy;

(d) Personal loans or any payment that would bestow a personal pecuniary benefit unrelated to a legitimate law enforcement purpose;

(e) The purchase of alcoholic beverages;

(f) Expenses for interior decorating, including pictures, art, and holiday decorations unrelated to a legitimate law enforcement purpose;

(g) Expenses for private communications or gifts related birthdays, funerals, or other special events; and

(h) Expenses for personal apparel, including t-shirts, sweatshirts, hats, weather gear, or identifying buttons or badges unrelated to a legitimate law enforcement purpose.

(3) **Asset forfeiture moneys shall be used in accordance with KRS 218A.420(4)**[~~Pursuant to KRS 218A.420(4), asset forfeiture moneys are supplementary~~] and shall not be used to defray or otherwise replace the ordinary operating expenses of the Commonwealth's or county attorney to whom the moneys are paid.[~~Further, the moneys paid pursuant to KRS 218A.420(4) are for the use of Commonwealth's and county attorneys and shall not supplant the funds available for other criminal justice agencies.~~]

(4) Consistent with the National Code of Professional Conduct for Asset Forfeiture, which is incorporated by reference, the following ethical prohibitions shall be applied to the expenditure of asset forfeiture moneys:

(a) The potential revenue from asset forfeiture moneys shall not be permitted to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of an ongoing investigation, or the due process rights of citizens; and

(b) Neither the employment nor salary of any employee of the unified prosecutorial system shall be made to depend upon either the level of seizures or the amount of asset forfeiture moneys he or she achieves.

[~~Section 2. When applying, a copy of the final order of forfeiture shall be forwarded to the Office of the Attorney General, Prosecutors Advisory Council, 909 Leawood Drive, Frankfort, Kentucky 40601.~~

~~Section 3. Subject to applicable statutes county and Commonwealth's attorneys shall expend money allocated from the fund for personnel, operating, equipment, training and education programs related to criminal justice.~~]

Section 5. [~~4.~~] Property purchased with money allocated from the fund shall be deemed property of the Commonwealth of Kentucky.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Submission of Asset Forfeiture Moneys", December 2007;

(b) "Application for Expenditure of Asset Forfeiture Funds", December 2007; and

(c) "National Code of Professional Conduct for Asset Forfeiture", United States GPO 1994.["]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: December 14, 2007
FILED WITH LRC: December 14, 2007 at noon

PERSONNEL CABINET
(As Amended at ARRS, February 11, 2008)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165
STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary[,] an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same class;

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the job classification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary; or

4, At a salary up to five (5) percent above the grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) A former employee who is probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion[~~on or after the effective date of this administrative regulation~~] shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job class with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job class with a higher pay grade than that from which he was reclassified. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job class with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher class, shall be adjusted to:

1. The salary received prior to the promotion or detail; and

2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that class to:

1. The greater of the new grade minimum or five (5) percent; or

2. The greater of the new grade minimum or ten (10) percent; or

3. The greater of the new grade minimum or a dollar amount approved by the secretary.

(b) If a job classification is assigned to a lower pay grade, an employee in that class shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that classification who is below the special entrance rate to the new rate. If sufficient funds are available, an appointing authority may uniformly grant to all employees in that class a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a class within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the class, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate, under the following provisions:

1. The adjustment shall be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and

2. The total adjustment granted at the time of the special entrance rate and under this paragraph shall equal the difference in the former entrance rate and the new entrance rate.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Section 3(2)(b) of this administrative regulation.

(3) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives a promotional increase after completion of a promotional probationary period.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary except if the adjustment is based on a pay grade change or a salary schedule change.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager

Program.

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a class at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific class who is regularly assigned to work on Saturdays, Sundays, and state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified classes in that agency who are regularly assigned to work Saturdays, Sundays, and state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages.

(f)[~~(3)~~] An agency may request, and be authorized for, both shift premium and weekend premium for the same job classes.

(3) Multilingual hourly premium.

(a) Upon request by an appointing authority, the Secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed.

(b) Language proficiency testing **shall**[~~must~~] be completed prior to an employee receiving the multilingual hourly premium. Testing **shall**[~~must~~] indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved **in accordance with this subsection**[~~per these requirements~~].

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages.

Section 10. Employee Recognition Award. (1) On the 16th day of a month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in state service, twelve (12) consecutive months of which is in the department granting the award;

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an Adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum

shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and

2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance; [~~or~~]

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) More than twenty-five (25) percent of the total number of full-time employees in a department, in a calendar year, shall not receive an ACE award.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department's current recurring base budget to support the award.

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 15, 2007 at 10 a.m.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
Office of the Secretary
(As Amended at ARRS, February 11, 2008)

101 KAR 2:210. Summary plan descriptions for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the summary plan descriptions for public employees covered under the self-insured plan. This administrative regulation incorporates by reference eleven (11) summary plan descriptions distributed to members of the Public Employee Health Insurance Program providing specific information on plan coverage, exclusions, and appeal rights.

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

(a) "Commonwealth of Kentucky, [~~"~~]Commonwealth[~~"~~] Essential Summary Plan Description", **February**[~~January 1~~], 2008 [~~2007~~], edition;

(b) "Commonwealth of Kentucky, [~~"~~]Commonwealth[~~"~~] Enhanced Summary Plan Description", **February**[~~January 1~~], 2008 [~~2007~~], edition;

(c) "Commonwealth of Kentucky, [~~"~~]Commonwealth[~~"~~] Prescription Drug Summary Plan Description, Commonwealth Select", **February**[~~January 1~~], 2008 [~~2007~~], edition;

(d) "Commonwealth of Kentucky, [~~"~~]Commonwealth[~~"~~] Select [~~"~~]with Health Reimbursement Account (HRA)[~~"~~] Summary Plan Description", **February**[~~January 1~~], 2008 [~~2007~~], edition;

(e) "Commonwealth of Kentucky, Select Summary Plan Description", January 1, 2008 [~~2007~~], edition;

(f) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential", January 1, 2008 [~~2007~~], edition;

(g) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Enhanced", January 1, 2008 [~~2007~~], edition;

(h) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Premier", January 1, 2008 [~~2007~~], edition;

(i) "Summary Plan Description, Commonwealth of Kentucky Health **Care** Flexible Spending Account", January 1, 2008 [~~2007~~], edition;

(j) "Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible [~~"Care"~~] Spending Account", January 1, 2008 [~~2007~~], edition; and

(k) "Summary Plan Description, Commonwealth of Kentucky, Health Reimbursement Account," [~~"~~]Waivers Only[~~"~~], January 1, 2008 [~~2007~~], edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor [~~200 Fair Oaks Lane, Suite 516~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~(3) The provisions in this administrative regulation will become effective January 1, 2008.~~]

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 7, 2007 at 1 p.m.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

PERSONNEL CABINET
(As Amended at ARRS, February 11, 2008)

101 KAR 2:230. Kentucky Employee Mediation Program.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110**(7)(i)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.025(3)(c)2.c. requires[~~NECESSITY, FUNCTION AND CONFORMITY. KRS 18A.025 enabled~~] the Personnel Cabinet to provide dispute resolution assistance to state employees and state agencies. KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This administrative regulation establishes **the**[~~and sets out~~] operational procedures for the mediation program.

Section 1. Establishment of the Kentucky Employee Mediation Program (KEMP). The Personnel Cabinet shall establish and administer the Kentucky Employee Mediation Program to coordinate mediations and the State Government Mediator Pool, as **estab-**

lished[~~defined~~] in Section 4 of this administrative regulation, in state agencies and[~~to~~] provide them with additional services.

Section 2. Eligibility for Services. (1) An employee or supervisor may request mediation services through the Kentucky Employee Mediation Program in order to resolve workplace issues. **The request shall be made using the Mediation Request Form.**

(2) Participation by all parties involved in the mediation sessions shall be voluntary. **Each party shall sign the Agreement to Mediate and the original, signed agreement shall be kept in the mediation file.**

(3) Employees shall be entitled to obtain mediation services without interference, coercion, or reprisal.

(4) Participation in mediation sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(5) Participation in mediation shall not preclude an agency from taking disciplinary or[~~a~~] corrective action as needed in dealing with job behavior or job performance problems.

(6) Participation in a mediation shall not affect the filing timeframes for a grievance with the cabinet or agency or appeal with the Personnel Board[~~, except as provided by 101 KAR 1:375 and KRS 18A.095~~].

Section 3. Mediation Session Procedures. (1) Mediation sessions shall be conducted by[~~:~~

~~(a)~~] mediators in the state government mediator pool who do not work in the participant's employing agency[~~, and~~

~~(b) Mediators certified by the Kentucky Employee Mediation Program, in accordance with Section 4 of this administrative regulation~~].

(2) Mediation sessions shall be scheduled by the Kentucky Employee Mediation Program [~~within a reasonable time~~] after receipt of the request to mediate and confirmation of agreement to participate **at a time convenient for all participants**.

(3) The Kentucky Employee Mediation Program **shall**[~~will~~] provide the participants with the name of the certified mediator. The participants may request another mediator if the appointed mediator has a conflict of interest. The scheduled mediation session may be rescheduled with written approval by participating parties.

(4) The participants shall ensure that all parties who have the authority to approve and implement the final mediation agreement are present at the mediation.

(5) Participation in mediation shall constitute an agreement by the parties that all offers of compromise, promises and statements made in the course of the mediation session shall not be offered as evidence or argument at any subsequent hearing or trial of **the**[~~he~~] subject matter of the dispute.

(6) The content of the mediation sessions shall remain confidential as permitted by state and federal law.

(7) All contents of the official mediation file**, including original, signed final agreements, shall be**[~~are~~] the property of the Kentucky Employee Mediation Program.

(8) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the mediated matter.

(9) The Kentucky Employee Mediation Program **or the mediator may**[~~reserves the right to~~] decline the request for mediation for reasonable cause, [~~to~~] issue a continuance of the mediation, or[~~to~~] terminate a mediation session.

(10) Final mediation agreements shall be reduced to writing, signed by the mediator and participants.

(11) All final mediation agreements or reports from mediations referred by the Personnel Board shall be filed with the board by the Kentucky Employee Mediation Program.

(12) [~~All original, signed final agreements are property of the Kentucky Employee Mediation Program.~~

~~(13)~~] The Kentucky Employee Mediation Program shall not oversee compliance with final mediation agreements.

(13)[~~(14)~~] Upon request and following the conclusion of the mediation session, the Kentucky Employee Mediation Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

Section 4. State Government Mediator Pool. (1) The Kentucky Employee Mediation Program shall establish and provide oversight for the State Government Mediator Pool including training, comediation, certification, and technical assistance services.

(2) The State Government Mediator Pool shall consist of state government employees who volunteer to serve and who have been certified by the Kentucky Employee Mediation Program.

(3) The Kentucky Employee Mediation Program shall establish specific certification criteria based on completion of the following:

(a) Minimum of forty (40) hours of general mediation training;

(b) Minimum of six (6) hours of continuing education per year;

(c) Minimum of twenty (20) hours of actual mediation experience; and

(d) Compliance with the Kentucky Employee Mediation Program's Standards of Professional Conduct[~~, incorporated by reference in Section 5 of this administrative regulation~~].

(4) The Kentucky Employee Mediation Program shall not certify any person as a mediator if the criteria of subsection **(3)**[~~(2)~~] of this section are not met.

(5) Mediators may use state time to conduct mediation sessions with the approval of the appointing authority. The mediator's employing agency shall pay reimbursing travel expenses in accordance with the provisions of 200 KAR **2:006**[~~Chapter 2~~].

(6) The Kentucky Employee Mediation Program shall maintain a current listing of certified state government mediators.

Section 5. Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "Mediation Request Form", February 2008;

(b) "Agreement to Mediate", February 2008; and

(c) "KEMP Standards of Professional Conduct", February 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or from the cabinet's Web site at http://personnel.ky.gov/.["~~Kentucky Employee Mediation Program's Standards of Professional Conduct", is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet's offices at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, during regular business hours, Monday through Friday, holidays excepted, or by downloading same from the Personnel Cabinet's Web site at http://personnel.ky.gov/.~~]

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: November 7, 2007

FILED WITH LRC: November 9, 2007 at 11 a.m.

CONTACT PERSON: Thomas B. Stephens, Executive Director, Personnel Cabinet, Office of Legal Services, 501 High Street, 3rd Floor; Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, February 11, 2008)

301 KAR 5:100. Interstate Wildlife Violators Compact.

RELATES TO: KRS 150.236

STATUTORY AUTHORITY: KRS 150.025, 150.236, 150.238

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish **administrative** regulations necessary to carry out the purpose of KRS Chapter 150. KRS 150.236 authorizes the department to promulgate **administrative** regulations regarding the suspension of hunting or fishing privileges for persons whose hunting or fishing privileges have been suspended or revoked by other jurisdictions. KRS 150.238 authorizes the department to enter into reciprocal agreements with other states regarding fish and wildlife violations. This administrative regulation establishes the provisions of a reciprocal interstate Wildlife Violators Compact.

Section 1. Definitions. [~~Unless the context requires otherwise, the definitions in this administrative regulation apply through this compact and are intended only for the implementation of this compact:~~]

(1) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" [~~with respect to a citation~~] means the act of answering **a**[~~the~~] citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(4) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, **administrative** regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(5) [~~"Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.~~

~~(6)~~] "Home state" means the state of primary residence of a person.

(6)[~~(7)~~] "Issuing state" means the party state which issues a wildlife citation to the violator.

(7)[~~(8)~~] "License" means any license **wildlife**, permit, or other public document **that**[~~which~~] conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(8)[~~(9)~~] "Licensing authority" means the department within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(9)[~~(10)~~] "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(10)[~~(11)~~] "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(11)[~~(12)~~] "State" means any state, territory, or possession of the United States[~~, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries~~].

(12)[~~(13)~~] "Suspension" means any revocation, denial, or withdrawal of any or all license privileges or rights, including the privilege or right to apply for, purchase, or exercise the benefits conferred by any license.

(13)[~~(14)~~] "Terms of the citation" means those conditions and options expressly stated upon the citation.

(14)[~~(15)~~] **"Wildlife" means:**

(a)1. All species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans; and

2. Food, fish, and shellfish;

(b) Which are:

1. Defined as wildlife, food fish, or shell fish in that specific jurisdiction; and

2. Protected by or otherwise regulated by statute, administrative regulation, ordinance, or administrative rule in that specific jurisdiction.[~~"Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.~~]

(15)[~~(16)~~] "Wildlife law" means any statute, law, **administrative** regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(16)[~~(17)~~] "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(17)[~~(18)~~] "Wildlife violation" means any cited violation of a statute, law, **administrative** regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

Section 2. Procedures for the Issuing State. (1) **If**[~~When~~] issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in **subsection** (2) of this section, if the officer receives the person's personal recognizance that the person **shall**[~~will~~] comply with the terms of the citation.

(2) Personal recognizance is acceptable:

(a) If not prohibited by local law or the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources; and

(b) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance required by subdivision (3) of this administrative regulation, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy.

Section 3. Procedures for Home State. (1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges or rights until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process **rights shall be provided to any person who is issued a citation pursuant to this administrative regulation**[~~safeguards will be accorded~~].

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter **the**[~~such~~] conviction in its records and shall treat **the**[~~such~~] conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual adopted by the **department**[~~KDFWR~~] as policy.

Section 4. Reciprocal recognition of suspension. All party states shall recognize the suspension of license privileges or rights of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and would have been the basis for suspension of license privileges or rights in their state.

Section 5. The commissioner shall designate a **department representative**[~~KDFWR representative~~] who shall serve as the department's compact administrator.

Section 6. Appeals. **(1) A person who is convicted pursuant to this administrative**[~~A person receiving a conviction under this~~] regulation or who is found to have committed a violation in another

state that warrants the department denying them a hunting license, fishing license, trapping license, or any wildlife permit, may appeal the decision and request in writing an administrative hearing within thirty (30) days of the denial.

(2)[(1)] Upon receipt of a written request for an administrative hearing, the department shall set the date, time, and place of the hearing and shall forthwith notify the person by regular U.S. mail.

(3)[(2)] An administrative hearing conducted pursuant to this section shall be held in accordance with KRS Chapter 13B.

Section 7. Effective Dates of Suspensions. Only violations that are committed on or after the effective date of **this compact**[entry], and resulting suspensions, shall be subject to the provisions of the compact.

Section 8. Incorporation by Reference. (1) "Compact Manual", 2/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife, Arnold L. Mitchell Building, #1 Sport's Lane, Frankfort, Ky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: October 10, 2007
FILED WITH LRC: October 15, 2007 at 11 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

KENTUCKY BOARD OF EDUCATION
Department of Education
(As Amended at ARRS, February 11, 2008)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS **Chapter 45A, 61.410, 66.480, 156.029, 156.076,** 156.160, 156.200**, 158.290, 160, 161.540, 161.560, 342.640, 424.260**
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070**(1)** gives the Kentucky Board of Education the management and control of the common schools. KRS 156.200 **requires** [gives] the Kentucky Board of Education **to regulate** [authority over] accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds"**:**
(1) Means all school funds including funds[:
(1)] derived from fund raising activities sponsored under the auspices of the school**; and**
(2)[. "Activity funds"] Does not mean[; and
(2) Not including] funds raised or received by organizations which do not come under the direct supervision of school authorities.

Section 2. A district board of education shall:
(1) Have the responsibility for administration and control of all activity funds; and
(2) Comply with "Accounting Procedures for Kentucky School Activity Funds".

Section 3. [All] **(1)** Activity funds internal accounts shall be audited annually by a certified public accountant. [All]
(2) Audit reports shall be reviewed and accepted by the local board[,] and appropriate action taken. [All]
(3) Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education**,** and a report **shall be** made to the district Board of Education.
(4) A copy of the school audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where it shall be open for public inspection.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", [dated] August 2007 [July, 2001], is [hereby] incorporated by reference.
(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower, 500 Mero Street, 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).

JON E. DRAUD, Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: December 12, 2007
FILED WITH LRC: December 14, 2007 at 10 a.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, February 11, 2008)

705 KAR 4:250. Energy Technology Engineering Career Pathway.

RELATES TO: KRS 158.808
STATUTORY AUTHORITY: KRS 156.070, 158.808
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.808 requires the Kentucky Department of Education to establish an energy technology engineering career pathway. This administrative regulation establishes a process for the Kentucky Board of Education to administer the energy technology engineering career track program, approve grant recipients, and distribute funds to local school districts.

Section 1. Definition. "Career pathway" means a coherent, articulated sequence of rigorous academic and career and technical courses, including dual credit opportunities, leading to a postsecondary degree or industry-recognized certification or licensure, that is developed, implemented, and maintained in partnership with secondary and postsecondary institutions, **businesses** [business], and employers.

Section 2. Application Process. (1) A Kentucky public school district shall be eligible to apply for a grant through a request for proposal process.
(2) A local school district superintendent shall submit the application and have the approval of participating schools' school-based decision making councils and local board of education.
(3) A grant application shall indicate the fiscal agent as a local board of education.
(4) To be eligible for funding, an applicant school shall provide an energy career pathway which includes the following components:
(a) The Project Lead the Way middle school program Gateway to Technology, with content to include energy-related activities and the following Project Lead the Way pre-engineering courses at the high school level:
1. Introduction to Engineering Design;
2. Principles of Engineering;
3. Digital Electronics;
4. A specialized course in Energy and Power Technology, or

integration of energy-related content and applications in each of the Project Lead the way courses. The content shall include energy-related applications as developed by the Kentucky Department of Education, in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, Governor's Office of Energy Policy, local school districts, and Project Lead the Way; and

5. Engineering Design and Development, with content to include energy-related research and applications;

(b) The opportunity for students to participate in energy related internships or cooperative education with energy-related industries or postsecondary education;

(c) Matching funds that shall be allocated to directly support the implementation of the program, which may include other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds. Previously awarded Project Lead the Way state grants and local matches shall not be considered as matching funds for this program;

(d) Status as a registered Project Lead The Way site prior to disbursement of funds; **and**

(e) Submission of seven (7) complete copies of the application plus an electronic copy.

Section 3. Selection of Grants. (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:

(a) Process for identifying potential students and estimated enrollment in the Energy Technology Engineering Career Pathway;

(b) An implementation plan, which includes:

1. Computer availability, including hardware and software commonly used in related fields;

2. Teacher availability and certification;

3. Elementary school integration;

4. Middle school and high school program;

5. Measures of student progress to be utilized;

6. Instructional space;

7. Student Recruitment Plan, including recruitment of traditionally underserved populations;

8. Business and postsecondary partners and other education partnerships; and

9. Narrative of budget and timeline;

(c) Program evaluation to include annual graduate follow-up surveys;

(d) Level of individual school and district commitment for teacher professional development; and

(e) Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds.

(2) An application shall be reviewed as follows:

(a) A team of evaluators shall review the **application** [~~applications~~]; and

(b)**1.** The Kentucky Department of Education shall approve funding based upon the results of the review.

2. Consideration may be given to provide for geographic diversity and the number of students to be served **in order to maximize the benefits of the program**.

Section 4. Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the Kentucky Department of Education.

(2) Allowable expenditures include:

(a) Laboratory equipment and instructional materials necessary for Project Lead the Way instruction;

(b) Computers and computer upgrades;

(c) Computer software required by Project Lead the Way;

(d) **A** laptop computer for the instructor;

(e) Travel expenses and registration fees for school counselors to attend the required Project Lead the Way counselors conference;

(f) Travel expenses and registration fees for teachers to attend the required Project Lead the Way summer teacher institutes;

(g) Resources and professional development for integrating energy activities in the curriculum; and

(h) Energy related instructional materials and equipment.

(3) State grant funds shall not be used to maintain, renovate, or build facilities or pay teacher salaries, but local district expenditures for these purposes may be included as matching funds.

(4) Monitoring of awarded grants shall include the following:

(a) Fiscal reports submitted quarterly to the Department of Education; and

(b) Annual program evaluation report on the implementation plan that outlines the project accomplishments related to the project need, objectives, and outcomes.

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).

JON E. DRAUD, Commissioner of Education
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: December 12, 2007

FILED WITH LRC: December 14, 2007 at 10 a.m.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, February 11, 2008)

806 KAR 14:007. Rate and form filing for health insurers.

RELATES TO: KRS **304.1-010, 304.1-050, 304.3-270,** 304.4-010, 304.14-120, 304.14-190, **304.17A-005,** 304.17A-095, 304.17A-096

STATUTORY AUTHORITY: KRS 304.2-110**(1)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110**(1)** authorizes the executive director of insurance [~~Executive Director of Insurance~~] to promulgate reasonable [~~administrative rules and~~] 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 [~~through 304.99-152~~]. This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [~~means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A~~].

(2) "Executive director" is defined in KRS 304.1-050(1) [~~means the Executive Director of Insurance~~].

(3) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

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

(5) "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement.

(6) "Office" is defined in KRS 304.1-050(2) [~~means the Office of Insurance~~].

Section 2. Filing Procedures. (1) A health insurance rate and form filing[~~filings~~] shall be accompanied by a Face Sheet and Verification [~~form~~][~~,~~] Form, HIPMC-F1[~~, April 2005 edition~~].

(2) A health policy form[~~forms~~] filed under policy form certification shall be accompanied by a Health Policy Forms Filing Certification Privilege Program[~~form~~][~~,~~] Form, HIPMC-F2[~~, April 2005 edition~~].

(3) An individual health insurance form filing[~~filings~~] shall be

accompanied by an Individual Health Forms Actuarial Certification[,] Form, HIPMC-R4 [, April 2005 edition].

(4) An insurer issuing, delivering, or renewing a:

(a) Health benefit plan shall complete and attach to each plan filed a Health Benefit Plan Summary Sheet - Form Filings[,] Form, HIPMC-F35[, April 2005 edition]; [and]

(b) Basic health benefit plan shall complete and attach to each plan filed a Basic Health Benefit Plan Summary Sheet - Form and Rate Filings[,] Form, HIPMC-RF-25[, April 2005 edition]**; and**

(c) Limited health service benefit plan shall complete and attach each plan filed a Limited Health Service Benefit Plan Summary Sheet - Form Filings, HIPMC-F37 pursuant to 806 KAR 17:440.

(5) Except for a health benefit plan rate filing[filings] pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a Rate Filing Information Form,[Form] HIPMC-R36[, April 2005 edition].

(6) If a rate or form filing as submitted by a health insurer is [determined by the office] not [to be] a complete filing, the office shall use **an Additional Health Information Request,** Form HIPMC-F16, [, April 2005 edition,] to request **submittal of the incomplete**[additional] information [from a health insurer if a rate or form filing cannot be accepted as submitted].

(7)**(a)** Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form**; and**

(b)[.] Other numbers shall not appear in close proximity to the form number.

(8) Each submission shall be accompanied by a submittal letter on the stationery of the filing entity which intends to use a form, listing by number all forms being submitted together with a brief description of each.

(9) If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (8) of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used;[,] and

(b) Identify by a unique form number each alternate page or alternative benefit [shall be identified by a unique form number].

(10) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(11) Except for an insert page[pages] or alternate page[pages], each form shall contain the corporate name and address of the health insurer.

(12) A form filed for approval by the office shall not contain [any] advertising or marketing material.

(13) If a new form is submitted, the filing entity shall identify the unique features of the form.

(14) If a filing includes a form which was previously disapproved by the office, the filing entity shall assign the form a new form number.

(15) A rate or form filing shall include two (2) complete sets of documents and a self-addressed stamped envelope.

Section 3. Filing Entity. A filing entity may include in a filing multiple [any number of] forms or documents pertaining to a single line of insurance, filed together on a particular date [, pertaining to a single line of insurance].

Section 4. Date of Filing. Pursuant to [Since] KRS 304.4-010(2), a fee [requires all fees] payable under the Kentucky insurance code shall [to] be collected in advance. The[, the] period of time in which the executive director may [affirmatively] approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the office:

(1) The rate or form filing;

(2) **The** appropriate fee pursuant to 806 KAR 4:010, Section 1(21); and

(3) A form[Forms] required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) A[Except for advertising or marketing material, a] form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved or certified by the office, which shall occur within the sixty (60) day time frame identified[specified] in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the executive director grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate [forms or rates] or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved**; and**[.]

(b) If a rate [rates] for the form is [are] required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A [Any] document subject to a filed only process, including [advertising, marketing material,] provider directories, provider agreements, subcontract provider agreements or risk-sharing arrangements, shall be:

(a) Filed [filed] with the office; and

(b) Subject [shall be subject] to review in accordance with KRS 304.14-120.

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form, which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity which identifies [setting forth]:

(1) All changes contained in the newly filed form;

(2) The form being replaced;

(3) The [and the] date the replaced form was:

(a) Approved;

(b) Withdrawn; or

(c) Submitted [approved, withdrawn, or submitted, as the case may be]; and

(4)[(3)] The effect[, if any,] the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

(a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;

(b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and

(c) Forms required by Section 2 of this administrative regulation.

(2) An appropriate fee pursuant to 806 KAR 4:010, Section 1(21)[(22)], shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) A health insurer [Health insurance companies] may file a rate or form **electronically through** [their rates and forms][in an electronic format as established by] the National Association of Insurance **Commissioners' electronic system for rate and form filings via the Web site www.serff.com** [Commissioners, in the manner prescribed by that format].

(2) An [Any] electronic filing as identified in subsection (1) of this section shall be in lieu of a **paper**[physical] filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-F1, "Face Sheet and Verification Form", **(02/2008)**[April 2005] edition;

(b) Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form", April 2005 edition;

(c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", April 2005 edition;

(d) Form HIPMC-F35, "Health Benefit Plan Summary Sheet-Form Filings", April 2005[,] edition;

(e) Form HIPMC-R36, "Rate Filing Information Form", April 2005[,] edition;

(f) Form HIPMC-F-16, "Additional Health Information Request", **(02/2008) edition;**[~~April 2005~~][~~,~~][~~edition; and~~]

(g) Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings", **(11/2007)** [~~,April, 2005~~] edition**; and**

(h) Limited Health Service Benefit Plan Summary Sheet - Form Filings, HIPMC-F37, (07/02) edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the office's [~~internet~~] Web site at: http://doi.ppr.ky.gov.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: December 7, 2007
FILED WITH LRC: December 10, 2007 at 2 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street; P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, February 11, 2008)

806 KAR 17:005. Health insurance forms and reports.

RELATES TO: KRS **304.1-010,** 304.4-010, 304.14-120, 304.14-190, 304.17A-095, 304.17A-096

STATUTORY AUTHORITY: KRS 304.2-110**(1)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110**(1)** authorizes the executive director of insurance to promulgate reasonable administrative rules and 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. This administrative regulation establishes forms and reports to be submitted to the Office of Insurance by a health insurer.

Section 1. (1) [“]Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings**,**[”] shall be filed by an insurer with a form or rate for a basic health benefit plan.

(2) [“]Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report, [”] shall be filed annually by an insurer offering a basic health benefit plan.

(3) [“]Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form**,**[”]shall be filed with a rate for a health benefit plan.

(4) [“]Form HIPMC-F1, Face Sheet and Verification Form**,** [”] shall be filed as the coversheet of a rate or form filing for a health benefit plan.

(5) **An**[“]Income and Expense Worksheet[”] shall be filed with a rate for a health benefit plan.

(6) [“]Form HIPMC-R33, Health Benefit Plan Regions, [”] which includes eight (8) identified health benefit plan regions in Kentucky**,** may be filed for a geographic region factor adjustment in a rate for a health benefit plan.

(7) [“]Form HIPMC-R34, Certification Form**,** [”] shall be filed with a rate for a health benefit plan for an individual, association, or small group.

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

(a) "Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings" (11/2007);

(b) "Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report"**,** (04/05);

(c) "Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form"**,** (04/05);

(d) "Form HIPMC-F1, Face Sheet and Verification Form"**,** (04/05);

(e) "Income and Expense Worksheet"**,** (1998);

(f) "Form HIPMC-R33, Health Benefit Plan Regions"**,** (12/00); and

(j) "Form HIPMC-R34, Certification Form"**, (2/2008)**[~~(04/05)~~].

(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.

(3) Forms may also be obtained on the Office of Insurance Web site at http://doi.ppr.ky.gov/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: December 7, 2007
FILED WITH LRC: December 10, 2007 at 2 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, February 11, 2008)

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: KRS **304.1-050,** 304.3-270, 304.4-010, **304.17A-005, 304.17A-095, 304.17A-0952, 304.17A-0954, 304.17A-096**[~~304.17A-005~~][~~, 304.17A-095, 304.17A-096, 304.17A-0952, 304.17A-0954~~], 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149, 304.17A-410, 304.17A-430, 304.17A-450**, 304.17A-500, 304.17A-750, 304.17B-021, 304.17B-023(3)**[~~, 304.17A-095, 304.17A-096~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-095(7)

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 provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and establish [~~to set forth~~] the format of the filings. This administrative regulation establishes the format and procedure [~~procedures~~] for the submission of a [~~filing~~] health benefit plan [~~rates so the executive director will have relevant information to approve or disapprove the~~] rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustment [~~adjustments~~] for case characteristics or health status.

(2) "Base new business rate change" means:

(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and

(b) For a product within a market segment class of business, equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business **the percentage change**.

(3) "Base premium rate" is defined in KRS 304.17A-005(3).

(4) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [~~means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A~~].

(5) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(6) "Covered person" is defined in KRS 304.17A-500(3).

(7) "Date of filing" means the date the office confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the office.

(8) "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.

(9) "Employer-organized association" is defined in KRS 304.17A-0954(1)(c).

(10) "Executive director" is defined in KRS 304.1-050(1) [~~means the Executive Director of Insurance~~].

(11)[~~(10)~~] "FFS" means a fee for service product type.

(12)[~~(11)~~] "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(19).

(13)[~~(12)~~] "Health benefit plan" is defined in KRS 304.17A-005(22).

(14)[~~(13)~~] "Health benefit plan region" or "geographic region" means each one (1) of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33**, Health Benefit Plan Regions, which is incorporated by reference in 806 KAR 17:005** [~~(12/00)~~].

(15)[~~(14)~~] "HMO" means a health maintenance organization product type.

(16)[~~(15)~~] "Index rate" is defined in KRS 304.17A-005(25).

(17)[~~(16)~~] "Insurance purchasing outlet" is defined in KRS 304.17A-750(4).

(18)[~~(17)~~] "Large group" is defined in KRS 304.17A-005(30).

(19)[~~(18)~~] "Material change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend shall not be considered a material change.

(20)[~~(19)~~] "Office" is defined in KRS 304.1-050(2) [~~means the Office of Insurance~~].

(21)[~~(20)~~] "POS" means a point of service product type.

(22)[~~(21)~~] "PPO" means a preferred provider organization product type.

(23)[~~(22)~~] "Small group" is defined in KRS 304.17A-005(42).

(24)[~~(23)~~] "Target loss ratio" means a loss ratio that an insurer files, which projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the information required by Sections 3 through 10 of this administrative regulation.

(2) The period of time in which the executive director shall [~~will~~] [~~affirmatively~~] approve or disapprove a [~~the~~] filing shall not begin until the date of filing.

(3) An [~~The~~] insurer shall not market or use the proposed rates [~~for any purpose~~] until the date of filing.

(4) A [~~The~~] filing and fee shall not be deemed received until the office confirms that:

(a) Information [~~All information~~] required by Sections 3 through 10 of this administrative regulation has been received; and

(b) The appropriate fee, as set forth in 806 KAR 4:010, has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing [~~submission~~] shall be submitted to the office for **a** [~~occur if there is~~]:

(a) [~~A~~] New rate filing; or

(b) [~~A~~] Material change to a previously-approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form, which is incorporated by reference in 806 KAR 17:005;

(b) The following filing fee or the domiciliary state fee, whichever is greater:

1. $100 for an original or new filing; or

2. Fifty (50) dollars for an amendment to a filing;

(c) Form HIPMC-F1, Face Sheet and Verification Form, which is incorporated by reference in 806 KAR 17:005;

(d) Signed actuarial memorandum prepared in accordance with Sections 6 and 7 of this administrative regulation;

(e) An [~~The~~] Income and Expense Worksheet, which is incorporated by reference in 806 KAR 17:005;

(f) Except for large groups, Certification Form HIPMC-R34, which is incorporated by reference in 806 KAR 17:005; and

(g) If a rate for a basic health benefit plan is included, Form HIPMC-RF-25, **Basic Health Benefit Plan Summary Sheet-Form and Rate Filings,** which is incorporated by reference in 806 KAR 17:005 [~~if a basic health benefit plan is included~~].

(3) Two (2) copies of all written material shall be submitted to the office.

(4) One (1) copy of all written material shall be submitted to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the office **and**[~~. This~~] shall include:

(a) An amendment;

(b) An update; or

(c) A response to an inquiry from the office.

(5) Two (2) copies of all correspondence with the office or other state agency concerning a filing shall be submitted to the office.

(6) A photocopy of the most recent annual financial report shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each[~~:~~

~~(a) Each~~] market segment as follows:

(a)[~~1.~~] Individual;

(b)[~~2.~~] Small group;

(c)[~~3.~~] Association; [~~and~~]

(d)[~~4.~~] Large group; and

(e) Except as otherwise authorized pursuant to KRS 304.17A-0954(2), each[~~.~~

~~(b) Each~~] employer-organized association [~~as defined in KRS 304.17A-0954(1)(c), except as otherwise authorized by employer-organized associations pursuant to KRS 304.17A-0954(2)~~].

(2) A large group rate filing may include each product type offered as follows:

(a) FFS;

(b) PPO;

(c) POS; and

(d) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

(a) FFS and PPO; or

(b) POS, HMO, and PPO.

Section 5. Employer-organized Association Rate Filings. (1)(a) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing; and

(b) If more than one (1)[~~. Each~~] employer-organized association is named in the filing as identified in paragraph (a) of this subsection and each employer-organized association [~~that~~] provides the insurer with written permission to have rates based on experience other than its [~~their~~] own, the insurer:

1. May have the experience of all employer-organized associations named in the filing combined for rate determination; and

2. Shall include proposed[~~. Proposed~~] rates for the [~~a~~] combination of associations [~~shall be contained~~] in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-0954(1)(c).

(3) If an insurer is proposing to begin marketing a health benefit plan to an employer-organized association, a rate filing may be based on the standard plan benefits, including appropriate formulas and rate factors within the limitations outlined in KRS 304.17A-0954. The filing shall include:

(a) Factors for all plans [~~any plan~~] to be offered; and

(b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(4) If the insurer receives written permission from an employer-

organized association regarding combining experience with other employer-organized associations, the insurer shall submit two (2) copies of the written permission to the executive director **with**[at the time of] the rate filing. The written permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the employer-organized association's own experience;

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer; and

(e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) Actuarial Standard of Practice No. 8, ["]Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No. 010, 1990 Edition)["], American Academy of Actuaries;

(b) Actuarial Standard of Practice No. 26, ["]Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996) ["], American Academy of Actuaries;

(c) Actuarial Standard of Practice No. 31, ["]Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997) ["], American Academy of Actuaries; and

(d) Actuarial Standard of Practice No. 41, ["]Actuarial Communication (Doc. No. 086, adopted March, 2002) ["], American Academy of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying the date that [when the company will begin using] the proposed rates shall be used;

(c) A discussion of the rate development, which shall include a detailed explanation of the following:

1. The effects of each of the following mandated benefits which [discussion] shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:

a. For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304.17A-139(4);

b. Hearing aids and related services in accordance with KRS 304.17A-132;

c. Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and

d. Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;

2. The claim cost development, which [that] shall include an explanation of the following:

a. Methodology;

b. Assumptions [Any assumption] including the following:

(i) Trend, including[along with] supporting analysis, which supports the trend level selected;

(ii) Benefit [Any benefit] change;

(iii) Utilization [Any utilization] or cost-per-service change;

(iv) Demographic [Any demographic] change;

(v) Change [Any change] in medical management;

(vi) Change [Any change] in provider contracts; and

(vii) Any other assumption used by the actuary in the claim cost development; and

c. Experience by month, including exposures or members, earned premium, paid claims, incurred claims, and incurred loss ratio, for the past [last] three (3) years for this product, or for a similar product if this filing is for a new product;

3.a. Development and printout of the following shall be shown by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and highest area factor:

(i) Base premium rates;

(ii) Index[, index] rates;

(iii) Corresponding[, and corresponding] highest premium rates; and

(iv) If offered, any applicable GAP premium rates for the standard plan option[, if offered, by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor].

b. If the filing contains more than one (1) product type, a development and printout as identified and described in clause a of [the information required by] this subparagraph [shall be provided] for each product type separately.

c. If the [For any] filing contains [containing] proposed rates for more than one (1) class of business, a development and printout as identified and described in clauses a and b of [the information required in] this subparagraph [shall be provided separately] for each class of business separately;

4. For an insurer [Effective January 1, 2001, for a company] that has existing GAP enrollees:

a. Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;

b. Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business, which included GAP enrollees; and

c. Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;

5. Factors used [Every factor] for each case characteristic, including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. A health benefit plan region other than the eight (8) identified in HIPMC-R33, **Health Benefit Plan Regions,** which is incorporated by reference in 806 KAR 17:005, shall not be used for a geographic region factor adjustment; and

b. Any [Include any] healthy lifestyle discount factor, if applicable, shall be included and [along with] an explanation of the determination of that factor, and **the condition under which**[where] that factor is applicable;

6. The anticipated pricing loss ratio, including a detailed justification of [the following] load factors, including percentages allocated for the:

a. Administrative [The percentage allocated for the administrative] expense assumption, including [with] an explanation of:

(i) Any [for any] change from the factor used for existing rates; and

(ii) How[. It shall be explained how] these costs are allocated among each benefit plan design, including [and attach] demonstrative documentation as an exhibit;

b. Commission [The percentage allocated for the commission] assumption, including [with] an explanation for any change from the factor used for existing rates;

c. Federal [The percentage allocated for federal], state, and local government tax assumptions, including [with] an explanation for a [any] change from the factor used for existing rates;

d. Investment [The percentage allocated for the investment] income assumption, including [with] an explanation for any change from the factor used for existing rates;

e. Profit [The percentage allocated for the profit] and contingency assumption, including [with] an explanation for a [any] change from the factor used for existing rates;

f. Assessments [The percentage allocated for assessments] pursuant to KRS 304.17B-021; and

g. Other [The percentage allocated for any other] identified load factors [factor];

(d) **A** detailed explanation, including an [with] example[,] of the following:

1. The method for determining a small group composite rate;

2. **The conditions under which**[When] a small group composite rate is recalculated; and

3. The group size that is eligible for a composite rate calcula-

tion;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or [~~any~~] other methods [~~method~~] of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies;

(f) Detailed discussion of the manner in which the projected amount of net assessments and payments under KRS 304.17B-021 and 304.17B-023(3) used [~~is included~~] in establishing the proposed rates in the filing as required by KRS 304.17A-095;

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments, and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor[~~, such as monthly or quarterly~~];

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business, which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates, [~~and, effective January 1, 2001,~~] excluding a [~~any~~] GAP class of business; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:

a. Individual;

b. Association; and

c. Small group [~~business~~]; and

2. That [~~all~~] the proposed rates meet the requirements of [~~are in compliance with~~] KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information:

(a) The information identified [~~provided~~] in Section 6(2)(a), (b), (c)1, 2, 6, (f), (g), (h) and (i) of this administrative regulation;

(b) Development of rating basis, including each adjustment for the following:

1. Age;

2. Gender;

3. Family composition;

4. Benefit plan;

5. Industry;

6. Healthy lifestyle; and

7. Any other adjustment included in the development;

(c) A [~~Any~~] formula for new and renewal business, including a definition of each term used in the formula;

(d) Credibility criteria used in conjunction with experience rating;

(e) Detailed explanation of a [~~any~~] change in the manual rating formula or experience rating formula;

(f) Detailed explanation of a [~~any~~] change in factors that would be used in a [~~any~~] formula;

(g) Any periodic trend rate applied in the formula;

(h) The composite effect of a [~~any~~] change in formula and formula factors; and

(i) Detailed explanation of any trend assumption used in experience rating.

(2) Certification Form HIPMC-R34, **Certification Form**, incorporated by reference in 806 KAR 17:005, shall not be required for a large group rate filing.

Section 8. Guaranteed Loss Ratio Filing for New Products or Products without Credible Experience. (1) A filing accompanied by a guaranteed loss ratio statement shall meet all requirements of KRS 304.17A-095(6)[~~, effective January 1, 2001~~].

(2) Individual, [~~market filings and~~] small group, and employer-organized [~~or small group~~] association market filings shall meet the following requirements regarding guaranteed loss ratios by duration:

(a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy.[~~:~~]

1. Expected loss ratios may vary by month within the first duration**; and**[~~.~~][~~;~~]

2. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;

(b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;

(c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio identified [~~specified~~] in the policy;

(d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio identified [~~specified~~] in the policy;

(e) The guaranteed lifetime loss ratio shall not be less than that identified [~~contained~~] in KRS 304.17A-095(6)(a)5; and

(f) The guaranteed loss ratios by duration shall be [~~are~~] guaranteed for any policy [~~all policies~~] issued under the policy form and shall be identified [~~specified~~] in the policy.

(3) A refund shall be calculated **pursuant to the following formula** [~~as follows~~]:

(a) Refundable premium for any year shall be the sum of the current year's refundable premium for each duration. Each duration's refundable premium shall be calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year's earned premium by duration and multiplying the result by the ratio of[~~: 1.~~] earned premium by duration[~~;~~] and [~~2.~~] earned premium by duration minus the items identified in **subparagraphs 1 and 2** [~~clauses a and b~~] of this **paragraph** [~~subparagraph~~] and **minus** any premium related expenses identified in **subparagraph 3 of this paragraph:**

1. [~~clause c of this subparagraph~~] [~~below~~][~~:~~

~~a.~~] State and local premium taxes allocated to that duration;

2.[~~b.~~] Assessments pursuant to KRS 304.17B-021 allocated to that duration; and

3.[~~c.~~] The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;

(b) If the annual earned premium is less than $2,500,000, the **minimum refund shall be calculated by**[~~:~~

~~1. Minimum refundable premium shall be equal to the~~] refundable premium multiplied by the [~~ratio of the~~] annual earned premium, divided by $2,500,000;

[~~2. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and~~

~~3. Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable premium for the subsequent year;~~]

(c) If the annual earned premium is equal to or greater than $2,500,000, the minimum refund shall be [~~equal to~~] the refundable premium;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Guaranteed loss ratios by duration;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;

(d) Earned premium by duration and description of method of allocation by duration;

(e) State premium tax by duration and description of method of allocation by duration;

(f) Local premium tax by duration and description of method of allocation by duration;

(g) Assessments by duration and description of the method of allocation by duration;

(h) Incurred claims by duration and description of method of allocation by duration;

(i) Preferred provider organization expenses and description of method of allocation by duration;

(j) Case management and utilization review expenses and description of method of allocation by duration;

(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;

(l) **A** description of reinsurance and identity of reinsurer;

(m) **A** statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) **A** statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) **A** statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium and refund carryover;

(q) Calculation of percent of earned premium that shall [~~is to~~] be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification; and

(u) Actuarial certification.

(5) An initial rate filing shall be a formal filing, and a subsequent rate filing may be submitted by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a Previously Filed Minimum Guaranteed Loss Ratio. (1) If amending a policy form or a previously filed minimum guaranteed loss ratio, a filing accompanied by a guaranteed loss ratio statement shall meet [~~all~~] the requirements of KRS 304.17A-095(6).

(2)**(a)** An insurer shall provide a minimum guaranteed loss ratio statement each time rates are amended for a policy form or if [~~when~~] amending a previously filed minimum guaranteed loss ratio. The statement shall identify amounts by which rates are amended and include an actuarial certification verifying that rates continue to meet the requirements of [~~remain in compliance with~~] the minimum guaranteed loss ratio**; and**

(b) [~~.~~]Most recently filed with the office.

(3) The initial rate filing and subsequent statements shall include an actuarial certification, which includes information to demonstrate meeting the requirements of [~~demonstrating compliance with~~] KRS 304.17A-0952 and Section 6 of this administrative regulation.

(4)**(a)** The currently approved loss ratio on file with the office under a prior approval process or a minimum guaranteed loss ratio shall be deemed a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios**; and**

(b)[~~.~~] Rate filings requesting a change in the previously[-]approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.

(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.

(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refundable premium shall be determined as follows:

(a) Refundable premium shall be equal to the annual earned premium multiplied by the percentage by which the target loss ratio exceeds the actual achieved loss ratio;

(b)**1.** If the annual earned premium is equal to or greater than $2,500,000, the minimum refundable premium shall be equal to the refundable premium as established in paragraph (a) of this subsection; **or**

2.[~~and (c)~~] If the annual earned premium is less than $2,500,000, the:

a.[~~1.~~] Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by $2,500,000;

b.[~~2.~~] Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

c.[~~3.~~] Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable premium for the subsequent year;

(c)[~~(d)~~] The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(d)[~~(e)~~] The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.

(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Actual loss ratio;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;

(d) Earned premium;

(e) State premium tax;

(f) Local premium tax;

(g) Assessments;

(h) Incurred claims;

(i) Preferred provider organization expenses;

(j) Case management and utilization review expenses;

(k) Reinsurance premiums less reinsurance recoveries;

(l) **A** description of reinsurance and identity of reinsurer;

(m) **A** statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) **A** statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) **A** statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;

(q) Calculation of percent of earned premium that is to be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) **An** auditor's certification; and

(u) **An** actuarial certification.

(9) An initial rate filing shall be a formal filing, and a subsequent rate filing may be by actuarial certification.

(10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio pursuant to [~~as provided for in~~] KRS 304.17A-095(6).

Section 10. Amendments to Previously [-]Approved Rate Filings. (1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously [-]approved by the office, which shall include the following:

(a) Identification of the rate file number assigned and [~~OOI File No.~~] stated in the Order of Approval received by the insurer from the office for the previously [-]approved rate filing;

(b) Date of approval of the previously [-]approved rate filing;

(c) The proposed effective date of the amendment;

(d) A fifty (50) dollar filing fee;

(e) Two (2) copies of a properly completed HIPMC-F1 form, **Face Sheet and Verification Form,** which is incorporated by reference in 806 KAR 17:005;

(f) Two (2) copies of a properly-completed HIPMC-R32 form, **Health Benefit Plan Rate Filing Information Form,** which is incorporated by reference in 806 KAR 17:005; and

(g) If the filing is for a basic health benefit, two (2) copies of the completed HIPMC-RF-25 Form, **Basic Health Benefit Plan Summary Sheet - Form and Rate Filings,** which is incorporated by reference in 806 KAR 17:005.

(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment, which shall include the following:

(a) An itemized list of the information to be amended and the reason for the amendment;

(b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders; and

(c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and [~~all~~] written material relating to the filing shall be submitted to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the office.

(4) The amendment to a previously [-]approved rate filing shall not be deemed received until the office confirms that the [~~all~~] information and [~~the~~] fifty (50) dollar filing fee required under [~~in~~] this section have been received.

(5) Within sixty (60) days of confirmation of receipt of the required information and fee, the office shall notify the insurer in writing of the acceptance or rejection of the amendment.

(6) The sixty (60) day confirmation time shall not begin until the office confirms that the required information and fee have been received.

Section 11. Material Incorporated by Reference: (1) The following material is incorporated by reference:

(a) [~~HIPMC-R32 (4/05), "Health Benefit Plan Rate Filing Information Form";~~

~~(b) HIPMC-F1 (04/05), "Face Sheet and Verification Form";~~

~~(c)~~] Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;

(b)[~~(d)~~] Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;

(c)[~~(e)~~] Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries;

(d)[~~(f)~~] Actuarial Standard of Practice No. 41, "Actuarial Communication (Doc. No. 086, adopted March, 2002)", American Academy of Actuaries.[~~;~~

~~(g) Income and Expense Worksheet (1998 Edition);~~

~~(h) HIPMC-R33 (12/00), "Health Benefit Plan Regions";~~

~~(i) HIPMC-R34 (4/05), Certification Form; and~~

~~(j) HIPMC-RF-25 (04/05), "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings".~~]

(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.

(3) Forms may also be obtained on the office's internet Web site at http://doi.ppr.ky.gov.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: December 7, 2007
FILED WITH LRC: December 10, 2007 at 2 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended ARRS, January 11, 2008)

806 KAR 17:500. Basic health benefit plan requirements.

RELATES TO: KRS 304.12-013, 304.14-020, 304.14-120, 304.14-140, 304.14-150, 304.14-180, 304.14-210, [~~304.12-010 - 304.12-020, 304.12-080 - 304.12-100, 304.12-215 - 304.12-235, 304.12-250, 304.14-010 - 304.14-040, 304.14-070 - 304.14-290, 304.14-310 - 304.14-320,~~] 304.14-360 [~~-304.14-450~~], 304.14-440, 304.14-450, 304.17-030, 304.17-042, 304.17-310, 304.17-313, 304.17-316, 304.17-3165, 304.17-319, [~~304.17-010 - 304.17-390,~~] 304.17A-005, 304.17A-096-304.17A-133, 304.17A-135-304.17A-145, 304.17A-148-304.17A-149, 304.17A-155, 304.17A-171, 304.17A-250, 304.17A-520, 304.17A-647, 304.18-032, 304.18-0365-304.18-037, 304.18-098, 304.18-0985, 304.32-153, 304.32-1585, 304.32-1591, 304.32-1595, [~~304.17A-095 - 304.17A-245, 304.17A-254 - 304.17A-330, 304.17A-500 - 304.17A-730, 304.17A-800 - 304.17A-844, 304.18-010 - 304.18-033, 304.18-035 - 304.18-180, 304.32-154, 304.32-165,~~] 304.32-280, 304.38-1935 -[~~304.32-1585, 304.32-1591 - 304.32-1595, 304.32-155, 304.38-1933~~]304.38-1937, 304.38-199, 304.38-210, 29 C.F.R. 2590.702(b), 2590.711, 2590.712[~~, 2590.702(b)(2)(iii), 29 U.S.C. 1185, 1185b,~~][~~304.38-198,~~] [~~42 U.S.C. 300gg-4-300gg-6, 300gg-51,~~][~~and~~][~~300gg-52~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), **304.17A-096, 304.17A-097**[~~, 304.17A-096~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of [~~any provision of~~] the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-096 authorizes an insurer that offers a health benefit plan [~~insurers~~] to offer one (1) or more basic health benefit [~~benefits~~] plans in Kentucky. This administrative regulation establishes the requirements of a basic health benefit plan.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [~~means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A~~].

(2) [~~"Executive director" is defined in KRS 304.1-050(1)~~][~~means the executive director of insurance~~][~~.~~

~~(3)~~] "Health benefit plan" is defined in KRS 304.17A-005(22).

(3)[~~(4)~~] "Insurer" is defined in KRS 304.17A-005(27).

(4)[~~(5)~~] "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(5)[~~(6)~~] "Office" is defined in KRS 304.1-050(2) [~~means the Office of Insurance~~].

(6)[~~(7)~~][~~(5)~~] "State mandated health insurance benefit" means a requirement in the Kentucky insurance code that an insurer:

(a) Provide a specified benefit;

(b) Include a specified coverage; or

(c) Pay, indemnify, or reimburse for a specified medical service.[~~:~~

~~(a) Coverage required under the Kentucky Insurance Code, as~~

~~defined in KRS 304.1-010, to be included under an individual, small group or employer association health benefit plan that includes:~~

~~1. Coverage of certain persons;~~

~~2. Coverage for specific illnesses, procedures, or types of treatment; or~~

~~3. Coverage of care by certain health providers for a covered expense; and~~

~~(b) Coverage which does not include benefits or coverage required by federal law or standard provisions or rights required under the Kentucky Insurance Code, as defined in KRS 304.1-010, or other laws of this state to be provided in an individual, small group, or employer-organized association health benefit plan.~~]

Section 2. Disclosure Statement. [~~(1) An insurer that offers a basic health benefit plan shall disclose to all individuals, small employer groups and employer-organized associations prior to the issuance of a policy or certificate of coverage that the basic health benefit plan:~~

~~(a) Provides limited coverage;~~

~~(b) Includes federally mandated benefits; and~~

~~(c) Excludes state-mandated benefits, except for diabetes as provided in KRS 304.17A-148, hospice as provided in KRS 304.17A-250(6) and chiropractic benefits as provided in KRS 304.17A-171.~~

~~(2)~~] A disclosure statement as required under KRS 304.17A-097 [~~disclosing the required information as established in subsection (1) of this section~~] shall:

(1)[~~(a)~~] Accompany or be a part of the application for coverage under a basic health benefit plan;

(2)[~~and~~

~~(b)~~] Be included in a basic health benefit plan policy and certificate of coverage;[~~.~~]

(3) [~~A statement of disclosure as established in subsection (2) of this section shall:~~

~~(a)~~] Meet the **same requirements as the minimum standards for the readability and intelligibility of insurance contracts as established in**[~~requirements of~~]806 KAR 14:121; and

(4)[~~(b)~~] List the state mandated health insurance benefit [~~state-mandated benefits~~] excluded in whole or in part from coverage under the basic health benefit plan.

Section 3. State Mandated Health Insurance Benefits. A basic [~~Benefits mandated to be included in a~~] health benefit plan differs from a health benefit plan by the insurer electing to exclude one (1) or more of the following [~~that may be included~~] in whole or in part [~~in a basic health benefit plan include~~]:

(1) Coverage of amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases as required under [~~provided for in~~] KRS 304.17A-139(4);

(2) [~~Coverage of health care treatment or services rendered by an ambulatory surgical center as provided for in KRS 304.17-317, 304.18-035, and 304.32-156;~~

~~(3) Coverage of the services rendered by a podiatrist as provided for in KRS 304.17-305(3) and 304.18-095(3);~~

~~(4) Coverage of dental services provided by a physician as provided for in KRS 304.17-315 and 304.18-097;~~

~~(5)~~] Coverage of the treatment of temporomandibular joint disorders[~~, craniomandibular joint disorders,~~] and craniomandibular jaw disorders as required under [~~provided for in~~] KRS 304.17-319, 304.18-0365, 304.32-1585, [~~and~~] 304.38-1937, and 806 KAR 17:090;

(3)[~~(6)~~] Coverage of mammography for a covered person diagnosed with breast disease as required under KRS 304.17-316(2)(b), 304.17A-133 [~~screening as provided for in KRS 304.17-316~~], 304.18-098, 304.32-1591, and 304.38-1935;

(4)[~~(7)~~] Coverage of the treatment of breast cancer by high-dose chemotherapy with autologous bone marrow transplantation or stem cell transplantation as required under [~~provided for in~~] KRS 304.17-3165, 304.17A-135, 304.18-0985, 304.32-1595, and 304.38-1936;

(5)[~~(8) Coverage of services provided by licensed psychologists and licensed clinical social workers as provided for in KRS 304.17-3185, 304.18-0363, 304.32-166, and 304.38-1933;~~

~~(9) Coverage of surgical first assisting services of a:~~

~~(a) Registered nurse first assistant as provided for in KRS 304.17A.146;~~

~~(b) Certified surgical assistant as provided for in KRS 304.17A-147; and~~

~~(c) Physician assistant as provided for in KRS 304.17A-1473;~~

~~(10)~~] Coverage of the treatment of human immunodeficiency virus infections as required under [~~provided for in~~] KRS 304.12-013(5);

(6)[~~(11)~~] Coverage of cochlear implants as required under [~~provided for in~~] KRS 304.17A-131;

(7)[~~(12)~~] Coverage of the treatment of autism in children as required under [~~provided for in~~] KRS 304.17A-143, and 806 KAR 17:460;

(8)[~~(13)~~] Coverage of telehealth services as required under [~~provided in~~] KRS 304.17A-138 and 806 KAR 17:270;

(9)[~~(14)~~] Coverage of anesthesia and hospital or facility charges [~~services~~] in connection with dental procedures as required under [~~provided for in~~] KRS 304.17A-149 and 806 KAR 17:095;

(10)[~~(15)~~] Coverage of hearing aids and related services as required under [~~provided for in~~] KRS 304.17A-132;

(11) Coverage for dependents as required under KRS 304.17-310; or

(12) Coverage of a second opinion as required under KRS 304.17A-520(4). [~~(16) Coverage of nursery care for well newly born children as provided for in KRS 304.17-185, 304.18-033, 304.32-154, and 304.38-198;~~

~~(17) Coverage of the diagnosis and treatment of endometriosis and endometritis as provided for in KRS 304.17-3163(1)(b), 304.18-0983(1)(b), 304.32-1593 (1)(b), and 304.38-1934(1)(b); and~~

~~(18) Coverage of bone density screening as provided for in KRS 304.17-3163(1)(c), 304.18-0983(1)(c), and 304.38-1934(1)(c).~~]

Section 4. Basic Health Benefit Plan Requirements. (1) Except for the exclusion of a [~~provisions relating to~~] state mandated health insurance benefit as [~~benefits~~] established under **KRS Chapter 304,** a basic health benefit plan shall[~~:~~

~~(a) Shall~~] comply with the applicable requirements of a health benefit plan as established under Subtitles 12, 14, 17, 17A, 18, 32, and 38 [~~of KRS Chapter 304~~] and 806 KAR Chapters 12, 14, 17, 18, 32, and 38[~~; and~~

~~(b) May include one (1) or more of the benefits listed in Section 3 of this administrative regulation~~].

(2) A basic health benefit plan shall include a health insurance benefit as [~~benefits~~] mandated under federal law pursuant to [~~as required under~~] KRS 304.17A-096, including a benefit [~~benefits~~] for the following:

(a) Women's health and cancer as identified in 29 U.S.C. 1185b, [~~pursuant to:~~

~~1.~~] 42 U.S.C. 300gg-6, or [~~for a group basic health benefit plan; and~~

~~2.~~] 42 U.S.C. 300gg-52[~~, for an individual basic health benefit plan~~];

(b) Parity in the application of limits to mental health benefits as identified in [~~pursuant to~~] 42 U.S.C. 300gg-5 and 29 C.F.R. 2590.712 for a group basic health benefit plan; [~~and~~]

(c) Newborns' and mothers' health as identified in 29 U.S.C. 1185, [~~pursuant to:~~

~~1.~~] 42 U.S.C. 300gg-4, 42 U.S.C. 300gg-51, or 29 C.F.R. 2590.711; [~~for a basic health benefit plan issued to a group and association; and~~

~~2. 42 U.S.C. 300gg-51, for a basic health benefit plan issued to an individual.~~]

(d) Treatment of an injury that results from an act of domestic violence or a medical condition as identified in [~~29 C.F.R.~~] 2590.702(b)(2)(iii); and

(e) Nondiscrimination due to genetic information as identified in 29 C.F.R. 2590.702(b)(1) and [~~29 C.F.R.~~] 2590.702(b)(2)(i)(B).

(3) A basic health benefit plan shall be marketed, distributed, and issued by an insurer in the same manner as a health benefit plan.

Section 5. Annual Reporting Requirements. An [~~In addition to the reporting requirements established under KRS 304.17A-330, an~~] insurer offering a basic health benefit plan shall report to the office [~~of Insurance~~] annually by April 1, on the form HIPMC-BHP-1, **Basic Health Benefit Plan Annual Report,** incorporated by reference in 806 KAR 17:005, the following information relating to [~~specific to~~] a basic health benefit plan:

(1) Total premium by product type and market segment;

(2) Total enrollment by product type, market segment, and county; and

(3) Total number of individuals not covered under health insurance for a period of at least one (1) year prior to coverage under a basic health benefit plan.

[~~Section 6. Incorporation by Reference. (1) Form HIPMC-BHP-1 "Basic Health Benefit Plan Annual Report," Kentucky Office of Insurance, April 2005 edition is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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 internet web site at: http://doi.ppr.ky.gov.~~]

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: December 7, 2007
FILED WITH LRC: December 10, 2007 at 2 p.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088; fax (502) 564-2728.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Health Policy Development
(As Amended at ARRS, February 11, 2008)

902 KAR 19:020. Data reporting by health care providers.

RELATES TO: KRS 216.2920-216.2929
STATUTORY AUTHORITY: KRS **216.2923,** 216.2925
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 mandates **that** the Cabinet for Health and Family Services **[~~to~~]** promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality and outcomes of health care services provided in the Commonwealth. **KRS 216.2923 authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data.** This administrative regulation establishes the **required** data elements, forms, and timetables **for submission of data to** the cabinet **and fines for noncompliance**[~~requires to carry out this mandate~~].

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract **to carry**[~~pursuant to carrying~~] out its statutory mandates and **which it** may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(2) [~~"Ambulatory surgeries" mean surgeries performed on an ambulatory or outpatient basis in a hospital or freestanding ambulatory surgery center, in accordance with Section 2(2)(b) of this administrative regulation.~~

~~(3)~~] "Cabinet" means the Cabinet for Health and Family Services or its agent.

(3)[~~(4)~~] "Coding and transmission specifications" or "Inpatient and Outpatient Data Coordinator Manual for Kentucky" [~~"UB-92 Submission Manual"~~] means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form [~~UB-92~~] and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4)[~~(5)~~] "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and identified by a provider-assigned patient control number unique to that inpatient episode, and shall not include inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, and hospice[~~, and major ambulatory surgeries notwithstanding that these may occur in hospitals~~].

(5) "Outpatient services" mean services performed on an outpatient basis in a hospital or freestanding licensed health facility, in accordance with Section 2(2) of this administrative regulation.

(6) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Inpatient and Outpatient Data Coordinator Manual for Kentucky. Licensed outpatient facilities that are a Medicare provider based entity of a hospital and report under the hospital's provider number shall be separately identifiable through a **facility-specific NPI**[~~sub-id~~][~~ambulatory surgeries~~].

(7) "Record" means the documentation of a hospitalization or outpatient service [~~ambulatory surgery~~] in the format **prescribed**[~~as defined~~] by the Inpatient and Outpatient Data Coordinator Manual for Kentucky as approved by the Statewide Data Advisory Committee [~~of a UB-92 whether constituted as a paper form or~~] on a computer readable electronic medium.

(8) "Standard Billing Form"-Institutional 837 or Professional 837[~~"UB-92"~~] means the uniform billing form identified by the Center for Medicare and Medicaid Services [~~the federal Health Care Financing Administration as HCFA Form 1450~~], as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and outpatient [~~ambulatory~~] encounters.

Section 2. Data Collection. (1) Hospitalization records. Hospitals shall document every [~~on a UB-92 record a~~] hospitalization they provide on a Standard Billing Form, and shall, from every record, copy and provide to the cabinet not less than the data specified in Section 9 of this administrative regulation.

(2) Outpatient services. [~~Ambulatory surgeries and mammography records.~~]

(a) Hospitals, clinics, ambulatory facilities and other entities of any nature providing outpatient services [~~ambulatory surgeries or mammograms~~] shall document on a Standard Billing Form [~~UB-92 record,~~] the outpatient services [~~ambulatory surgeries and mammograms~~] they provide, as defined in Section 1 of this administrative regulation, and shall, from every record, copy and provide to the cabinet not less than the data specified in Section 9 of this administrative regulation.

(b)[~~1. An emergency room visit shall be included as an ambulatory surgery if the patient:~~

~~a. Had a surgical procedure listed in paragraph (c) of this subsection; and~~

~~b. Utilized a surgical suite (including endoscopy rooms).~~

~~2. If the procedure was done in the emergency room, and not a surgical suite, the patient record shall not be submitted.~~

~~(c)~~] The required outpatient services [~~ambulatory surgery~~] procedure codes are **set forth**[~~defined~~] in the Inpatient and Outpatient Date Coordinator Manual for Kentucky. [~~shall be as follows:~~]

[~~ICD-9-CM Procedure Codes~~
~~01.00 through 86.99~~
~~87.37 (mammography)~~
~~88.40 through 88.60~~
~~98.50 through 98.59~~]

(3) Data collection on patients. Providers shall submit required data on every patient as provided in Section 9 of this administrative regulation, whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data.

(a) Data shall be deemed final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider

could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b)[~~(a)~~] Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c)[~~(b)~~] Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the entity that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services occurring within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Inpatient and Outpatient Data Coordinator Manual for Kentucky [~~issued by the cabinet~~].

(b) All providers [~~Hospitals~~] shall submit records on computer-readable electronic media[~~, and other providers with capability to submit records on computer-readable electronic media shall do so~~].

(c) Providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the cabinet, if any, have been corrected and resubmitted.

[~~(d) A provider who submits records in the form of paper copies shall deliver the copies to the cabinet, or send them in secure packaging by mail postmarked no later than the due date established in Section 4 of this administrative regulation.~~

~~(e) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit zip code suffix if any (but not city or five (5) digit zip code) shall be rendered unreadable on paper copies before the copies are submitted to the cabinet, and shall not be included with electronically submitted data.~~]

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall**, within twenty-four(24) hours of submission**[~~periodically~~], by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 3(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall become the next following working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 3(1) of this administrative regulation, and at a frequency a provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. Data received by the cabinet shall upon receipt, be edited to ensure completeness and validity of the data for further processing. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate in each field of zero percent.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of 100 percent in each field of the data elements.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days following official release of coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky.

Section 6. Fines for Noncompliance. (1) A provider failing to meet quarterly submission guidelines as established in Sections 4 and 5 of this administrative regulation shall be assessed a fine of $500 per violation.

(a) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the assessment of the fine and documentation of the reporting deficiency.

(b) A provider shall have thirty (30) days from the date of the notification letter, to pay the fine which shall be made payable to the Kentucky State Treasurer and returned by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy [~~Department for Public Health, Health Policy Development Branch~~], 275 East Main Street, 4 W-E [~~HS 1E-B~~], Frankfort, Kentucky 40621.

(c) Fines during a calendar year shall not exceed $1,500 per provider.

(2) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver[~~, to be awarded in extreme cases only~~].

(b) Providers shall **request an extension or waiver from**[~~notify~~] the Office of Health Policy [~~Development Branch~~] on or before the last day of the data reporting period to receive an extension or waiver for that period.

(c) **1. Extensions and waivers shall not exceed a continuous period of greater than six (6) months.**

2. The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

a. Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

b. The severity of the event prompting the request; and

c. Whether the provider continues to gather and submit the information necessary to obtain payment.[~~Extensions and waivers shall be extended to providers on a case-by-case basis, at the discretion of the cabinet and shall not exceed a continuous period of greater than six (6) months~~].

(d) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 7. Appeals. (1) A provider notified **of its**[~~for~~] noncompliance and assessed a fine pursuant to Section 6(1) of this administrative regulation shall have the right of appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, he shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary, or his designee, shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS **13B.050**[~~13B.110~~]. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 8. Working Contacts. (1) By January 1 of each calendar year, a provider required by this administrative regulation to submit data shall report by letter to the cabinet the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the cabinet.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated working contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 9. Required Data Elements. [~~UB-92 data~~]. (1) Providers shall ensure that each record [~~copy of UB-92 data~~] submitted to the cabinet contains at least the following data elements as provided for on the Standard Billing Form [~~UB-92 form~~].

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator manual for Kentucky.

(3) Additional data elements as specified in the Inpatient and Outpatient Coordinator Manual for Kentucky shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI [~~Sub-ID~~]
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier – ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

[~~FIELD #~~	~~DATA ELEMENT LABEL~~
~~3~~	~~*Provider Assigned Patient Control Number~~
~~4~~	~~*Type of Bill (inpatient, outpatient or other)~~
~~5~~	~~*Federal Tax Number or Employer Identification Number (EIN)~~
~~6~~	~~*Statement Covers Period~~
~~11~~	~~Patient Birth Weight (state-reserved field)~~
~~13~~	~~*Patient City and Zip Code~~
~~14~~	~~*Patient Birth date~~
~~15~~	~~*Patient Sex~~
~~16~~	~~Patient Marital Status~~
~~17~~	~~*Admission/Start of Care Date~~
~~18~~	~~Admission Hour~~
~~19~~	~~*Type of Admission~~
~~20~~	~~*Source of Admission~~
~~22~~	~~*Patient Status (at end of service or discharge)~~
~~23~~	~~*Provider Assigned Medical Record Number~~
~~32-35~~	~~Occurrence Codes & Dates~~
~~39-41~~	~~Value Codes and Amounts~~
~~42~~	~~*Revenue Codes/Groups~~
~~46~~	~~Units of Service~~
~~47~~	~~*Total Charges by Revenue Code Category~~
~~50~~	~~*Payor Identification - Payor Name~~
~~67~~	~~*Principal Diagnosis Code~~
~~68-75~~	~~Secondary and Other Diagnosis Codes~~

~~77~~	~~External Cause of Injury Code (E-code)~~
~~79~~	~~*Procedure Coding Method Used~~
~~80~~	~~Principal Procedure Code & Date~~
~~81~~	~~Secondary and Other Procedure Codes & Date~~
~~82~~	~~*Attending Physician Unique Physician Identification Number (UPIN) or alternate number~~
~~83~~	~~Other Physician UPIN or alternate number~~]

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Institutional 837 Version/Release 004010X0196A1 - Standard Billing Form", edition 2003; [~~Form UB-92, August 2000; and~~]

(b) "Professional 837 Version/Release 004010/004010A1 - Standard Billing Form", edition 2007; and [~~UB-92 Submission Manual, November 1999.~~]

(c) "Inpatient and Outpatient Data Coordinator Manual for Kentucky", edition January 2008 [~~2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE MILLER, Secretary

APPROVED BY AGENCY: January 14, 2008

FILED WITH LRC: January 15, 2007 at 11 a.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, February 11, 2008)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, **205.6481-205.6497,** 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a[, ~~Pub.L. 109-171~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),[~~205.6481-205.6497,~~] 42 U.S.C. 1396a(a)(10), (r)(2), **1396**b(f), **1396**d(q)(2)(B), 1397aa[, ~~Pub.L. 106-170~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 218A.010(3)[~~means the Cabinet for Health and Family Services~~].

(2) "Child" means a person who:

(a)1.a. Is under the age of eighteen (18); or

b. Is under age nineteen (19) if the person is:

(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and

(ii) Expected to complete the program before age nineteen (19);

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(3) "Evidence of identity" means:

(a) A current state driver's license or state identity document bearing the individual's picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or

(c) For a child who is age sixteen (16) or younger:

1. A school identification card with a photograph;

2. A military dependent's identification card, if it contains a photograph;

3. A school record that shows the:

a. Date and place of birth; and

b. Parent or parents' name;

4. A clinic, doctor, or hospital record showing date of birth;

5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(5) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving **supplemental**[~~supplement~~] security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets **the** income standards established in 907 KAR 1:640[~~, Income standards for Medicaid~~]; and

(e) Meets **the** resource standards established in 907 KAR 1:645[~~, Resource standards for Medicaid~~].

(6) "Minor teenage parent" means an individual who:

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

(b) Is not married; and

(c) Has a minor child in his care.

(7)[~~(6)~~] "Satisfactory documentary evidence of citizenship or nationality" means:

(a) A United States passport;

(b) A Certificate of Naturalization (DHS Form N-550 or N-570);

(c) A Certificate of United States Citizenship (DHS Form N-560 or N-561);

(d) One (1) of the following documents submitted with evidence of identity[,] if a document identified in paragraphs, (a) through (c) of this subsection is not available or cannot be obtained:

1. A United States birth certificate;

2. A Certification of Birth issued by the Department of State (Form DS-1350);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545);

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872);

7. A final adoption decree;

8. Evidence of civil service employment by the United States government before June 1976; or

9. An official military record of service showing a United States place of birth;

(e) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

a. Was established at the time of a person's birth;

b. Was created at least five (5) years before the initial application date; and

c. Indicates a United States place of birth; or

2. A life, health, or other insurance record that:

a. Shows a United States place of birth; and

b. Was created at least five (5) years before the initial application date; or

(f) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (e) of this subsection is not available or cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:

1. Federal or state census record showing:

a. United States citizenship; or

b. A United States place of birth;

2. Institutional admission papers that:

a. Are from a nursing facility, skilled nursing facility, or other institution;

b. Were created at least five (5) years before the initial application date; and

c. Indicate a United States place of birth;

3. Medical record that:

a. Was created at least five (5) years before the initial application date**, unless the application is for a child under age five (5)**; and

b. Indicates a United States place of birth unless the application is for a child under age five (5); or

4. Written affidavit by at least two (2) individuals:

a. Of whom one (1) is not related to the applicant;

b. Who have personal knowledge of the event establishing the applicant's claim of citizenship; and

c. Who provide proof of their own citizenship and identity.

(8)[~~(7)~~] "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(9)[~~(8)~~] "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving Title IV-E benefits, Supplemental Security Income, or Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(a) A child in a foster family care or private nonprofit child-caring institution dependent [~~in whole or in part~~] on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(c) A pregnant woman;

(d) A child of unemployed parents;

(e) A child in a subsidized adoption dependent[~~in whole or in part~~] on a governmental agency;

(f) A child (but not his parents) who:

1. Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

2. Meets the definition of Section 1(2) of this administrative regulation;

(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(h) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(i) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI or SSP except for these benefits; and

3. Is not entitled to hospital insurance benefits under the Medicare program;

(j) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(k) A child who:

1. Was receiving supplemental security income on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive supplemental security income; or

(l) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of needy persons listed in this subsection shall be included in the program as categorically-needy and thus eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to twelve (12) months of extended Medicaid.

(c) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

1. The child:

a. Has not reached his first birthday; and

b. Resides in the household of the woman; and

2. The woman remains, or would remain if pregnant, eligible for the assistance.

(d)1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income[~~,~~] shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an institutionalized individual in an intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) or supports for community living (SCL) for an individual with mental retardation or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

(e) A woman during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640[~~, Income standards for Medicaid~~].

(f) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, [~~Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act,~~] Section 2(2)(c).

(h) If federal Medicaid-matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640 [~~, Income standards for Medicaid.~~] Section 2(2)(f).

Section 3. The Medically Needy. (1) An individual, including a child pursuant to Section 2(2)(f) of this administrative regulation or a pregnant woman who has sufficient income to meet the individual's basic maintenance needs, may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640,[~~Income standards for Medicaid,~~] through 907 KAR 1:665, [~~Special income requirements for hospice and home and community based services (HCBS),~~] if the individual meets:

(a) The income and resource standards of the medically needy program established in 907 KAR 1:640[~~, Income standards for Medicaid~~] and 907 KAR 1:645[~~, Resource standards for Medicaid~~]; and

(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.

(2) The medically needy eligible groups shall include:

(a) A pregnant woman during the course of her pregnancy; [~~and~~]

(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated); and

(c) A Medicaid works individual.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, [~~Income standards for Medicaid,~~] and resource limitations shown in 907 KAR 1:645[~~, Resource Standards for Medicaid,~~] and for the scope of benefits specified in 907 KAR 1:006[~~, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII~~] A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. For the month in which the determination was made.

(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006[~~, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII~~].

(3) A specified low-income Medicare beneficiary as defined in 42 U.S.C. 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)[~~(I)~~] shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be **as established in this section.**[~~:~~]

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition in Section 1(2) of this administrative regulation.[~~;~~]

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy.[~~;~~]

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a)1. Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

a. The work is intermittent; and

b. The excess is of a temporary nature as evidenced by the fact that the individual:

(i) Was under the 100 hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

2. Within twelve (12) months prior to application, a parent received unemployment compensation; or

3. A parent is receiving or has been found ineligible for unemployment compensation; and

(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(3)(ii).[~~;~~]

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified.[~~;~~]

(5) An aged individual shall be at least sixty-five (65) years of age.[~~;~~]

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI).[~~;~~]

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI.[~~;~~]

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;

d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, have a caretaker relative who shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.[;]

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister.[;]

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness.[;]

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.[;]

(12) The[~~following~~] citizenship and residency requirements **established in this subsection** shall be applicable.[:]

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The cabinet:

(i) Shall exempt an applicant or recipient who currently receives Medicare or SSI or who no longer receives Medicare or SSI, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;

(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and

(iii) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

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

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

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

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

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

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

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

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

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

(xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unremarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

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

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

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

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

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

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

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unremarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(viii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

(ix) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance **as provided in this paragraph.**[~~under the following circumstances and conditions:~~]

1. The alien shall meet the income, resource and categorical requirements of the Medicaid Program.[;]

2. The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious

jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.[;]

3. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.[~~; and~~]

4. The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.[;]

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.[;]

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.[;]

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.[~~; and~~]

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday; or

(c) Sixty-five (65) years of age or over; or

(4) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) The applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements.

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 15. 2007
FILED WITH LRC: November 20, 2007 at 3 p.m.

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

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

907 KAR 1:038. Hearing and Vision Program services.

RELATES TO: KRS 205.520, 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. [~~440.140,~~] 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision [~~program~~] services for which payment shall be made by the Medicaid Program.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090[~~, Acquired brain injury services~~];

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160[~~, Home and community based waiver services~~]; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595[~~, Model Waiver II services and payments~~]; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(3)[~~(2)~~] "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(5)[~~(4)~~] "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(6)[~~(5)~~] "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7)[~~(6)~~] "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP **benefits** and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP **benefits** and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP **benefits** and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~]; or

2. Receive SSP **benefits** and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(c) Blind individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~]; or

2. SSP **benefits**, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(d) Disabled individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~], including children; or

2. SSP **benefits**, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022**;**[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or~~]

(h) Pregnant women; **or**

(i) Medicaid works individuals.

(8) "Hearing instrument" is defined by KRS 334.010(4).

(9)[~~(7)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130[~~, Medical necessity and clinically appropriate determination basis~~].

(10)[~~(8)~~] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53

(11)[~~(9)~~] "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~];

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR

1:022[~~, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services~~]; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145[~~, Supports for community living services for an individual with mental retardation or a developmental disability~~]; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1.

(12) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Hearing Services. (1) All hearing coverage shall be:

(a) Limited to an individual under age twenty-one (21); and

(b) Provided in accordance with the Hearing Program Manual.

(2) Unless a recipient's health care provider demonstrates that services in excess of the [~~following~~] limitations **established in this subsection** are medically necessary, reimbursement for services provided by an audiologist licensed pursuant to KRS 334A.030 [~~a certified audiologist~~] to a recipient shall be limited to:

(a) The following procedures which shall be covered only if a recipient is referred[~~,~~] by a physician[~~,~~] to an audiologist licensed pursuant to KRS 334A.030:

Code	Procedure
92552	Pure Tone audiometry (threshold); air only
92555	Speech audiometry threshold
92556	Speech audiometry threshold; with speech recognition
92557	Comprehensive audiometry **evaluation**[~~eval~~]
92567	Tympanometry
92568	Acoustic reflex testing
92579	Visual reinforcement audiometry
92585	Auditory evoked potentials
92587	Evoked otoacoustic emissions
92588	Complete or diagnostic evaluation (comparison of transient or distortion product otoacoustic emissions at multiple levels and frequency)
92541	Spontaneous nystagmus test
92542	Positional nystagmus test
92543	Caloric vestibular test
92544	Optokinetic nystagmus test
92545	Oscillating tracking test
92546	Sinusodial vertical axis rotational testing
92547	Use of vertical electrodes

(b) Complete hearing evaluation;

(c)[~~(b)~~] Hearing instrument[~~aid~~] evaluation;

(d)[~~1.~~][~~(c)1.~~] Three (3) follow-up visits **that shall be:**

1. Within the six (6) month period immediately following fitting of a hearing instrument[~~aid~~]; and

2. [~~A follow-up visit shall be~~]Related to the proper fit and adjustment of the[~~that~~] hearing instrument[~~aid~~]; and

(e)[~~(d)~~] One (1) additional follow-up visit **that is:**

1. At least six (6) months following the fitting of **the**[a] hearing instrument**; and**

2. Related to the proper fit and adjustment of the hearing instrument[~~aid~~].

(3) Hearing instrument[~~aid~~] benefit coverage shall:

(a) Be for a hearing instrument[~~aid~~] model **that is:**

1. Recommended by an audiologist licensed pursuant to KRS 334A.030**;**

2.[~~a certified audiologist~~][~~if the model is~~] Available through a Medicaid-participating specialist in hearing instruments;[~~hearing aid dealer; and~~]

(b) Not exceed $800 per ear every thirty-six (36) months; and

(c) Be limited to the following procedures:

Code	Procedure
V5010	Assessment for Hearing instrument
V5011	Fitting, Orientation, Checking of Hearing instrument
V5014	Repair, Modification of Hearing Instrument
V5015	Hearing Instrument Repair Professional Fee
V5020	Conformity Evaluation
V5030	Hearing Instrument, Monaural, Body Aid Conduction
V5040	Hearing Instrument, Monaural, Body Worn, Bone Conduction
V5050	Hearing Instrument, Monaural, In the Ear Hearing
V5060	Hearing Instrument, Monaural, Behind the Ear Hearing
V5070	Glasses; Air Conduction
V5080	Glasses; Bone Conduction
V5090	Dispensing Fee, Unspecified Hearing Instrument
V5095	Semi-Implantable Middle Ear Hearing Prosthesis
V5100	Hearing Instrument, Bilateral, Body Worn
V5120	Binaural; Body
V5130	Binaural; In the Ear
V5140	Binaural; Behind the Ear
V5150	Binaural; Glasses
V5160	Dispensing Fee, Binaural
V5170	Hearing Instrument, Cros, In the Ear
V5180	Hearing Instrument, Cros, Behind the Ear
V5190	Hearing Instrument, Cros, Glasses
V5200	Dispensing Fee, Cros
V5210	Hearing Instrument, Bicros, In the Ear
V5220	Hearing Instrument, Bicros, Behind the Ear
V5230	Hearing Instrument, Bicros, Glasses
V5240	Dispensing Fee, Bicros
V5241	Dispensing Fee, Monaural Hearing Instrument, Any Type
V5242	Hearing Instrument, Analog, Monaural, CIC (Completely In the Ear Canal)
V5243	Hearing Instrument, Analog, Monaural, ITC (In the Canal)
V5244	Hearing Instrument, Digitally Programmable Analog, Monaural, CIC
V5245	Hearing Instrument, Digitally Programmable Analog, Monaural, ITC
V5246	Hearing Instrument, Digitally Programmable Analog, Monaural, ITE (In the Ear)
V5247	Hearing Instrument, Digitally Programmable Analog, Monaural, BTE (Behind the Ear)
V5248	Hearing Instrument, Analog, Binaural, CIC
V5249	Hearing Instrument, Analog, Binaural, ITC
V5250	Hearing Instrument, Digitally Programmable Analog, Binaural, CIC
V5251	Hearing Instrument, Digitally Programmable Analog, Binaural, ITC
V5252	Hearing Instrument, Digitally Programmable, Binaural, ITE
V5253	Hearing Instrument, Digitally Programmable, Binaural, BTE
V5254	Hearing Instrument, Digital, Monaural, CIC
V5255	Hearing Instrument, Digital, Monaural, ITC
V5256	Hearing Instrument, Digital, Monaural, ITE
V5257	Hearing Instrument, Digital, Monaural, BTE
V5258	Hearing Instrument, Digital, Binaural, CIC
V5259	Hearing Instrument, Digital, Binaural, ITC
V5260	Hearing Instrument, Digital, Binaural, ITE
V5261	Hearing Instrument, Digital, Binaural, BTE
V5262	Hearing Instrument, Disposable, Any Type, Monaural
V5263	Hearing Instrument, Disposable, Any Type, Binaural
V5264	Ear Mold (One (1) Ear Mold Per Year Per Ear and if Medically Necessary)
V5266	Hearing Instrument Battery (Limit of Four (4) Per **Instrument**[~~Aid~~] When Billed With A New Hearing Instrument Or A Replacement **Instrument**[~~Aid~~])
V5267	Hearing Instrument Supplies, Accessories
V5299	Hearing Service Miscellaneous (May Be Used to Bill Warranty Replacement Hearing Instruments

	But Shall be Covered Only if Prior Authorized by the Department)

[.]

Section 3. Vision Program Services. (1) Vision program coverage shall be limited to:

(a) A prescription service;

(b) A repair service made to a frame;

(c) A diagnostic service provided by:

1. An ophthalmologist; or

2. An optometrist to the extent the optometrist is licensed to perform the service.

(2) Eyeglass coverage shall:

(a) Be limited to a recipient who is under age twenty-one (21); and

(b) Not exceed:

1. $200 per year for a recipient in the global choices benefit package; or

2. $400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.

(3) To be covered:

(a) A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) or over;

(b) A radiology service specified in 907 KAR 3:005, [~~Physicians' services,~~] Section 5, shall require prior authorization regardless of a recipient's age; [~~and~~]

(c) A service shall be provided in accordance with the Vision Program Manual; and

(d) A lens shall be polycarbonate and scratch coated.

Section 4. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563[~~, Medicaid covered services hearings and appeals~~].

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560[~~, Medicaid hearings and appeals regarding eligibility~~].

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671[~~, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions~~].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Vision Program Manual", October 2007[~~2006~~] edition["], Department for Medicaid Services; and

(b) "The Hearing Program Manual", October 2007[~~2006~~] edition["], Department for Medicaid Services.

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

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physicians and Specialty Services
(As Amended at ARRS, February 11, 2008)

907 KAR 1:039. Payments for hearing services.

RELATES TO: KRS 205.520, 334.010, 334.040, 334.200, **334A.020(5)**, 42 C.F.R. 447.200, 204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~, 1998 Ky. Acts ch. 615, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the program of Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the department[~~cabinet~~] for hearing services.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comparable **instrument**[~~aid~~]" means an **instrument**[~~aid~~] falling within the general classifications of fitting type, for example, body, behind-the-ear, in-the-ear, or eyeglasses.

(3) "Department" means the Department for Medicaid Services.

(4) "Hearing instrument" is defined by KRS 334.010(4).

(5) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Reimbursement to an Audiologist.[~~(1)~~] The department[~~cabinet~~] shall reimburse a participating audiologist at usual and customary actual billed charges up to the fixed upper limit per procedure established by the department[~~cabinet~~] at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

[~~(2) If there is no median available for a procedure, or the department][cabinet] determines that available data relating to the median for a procedure is unreliable, the department][cabinet][shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.~~]

Section 3. Hearing Instrument Reimbursement. (1) If a manufacturer of a hearing instrument billed to the department submits a price schedule which includes the manufacturer's invoice price of the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The manufacturer's invoice price plus a professional fee of:

1. $150 for the first (one (1) ear) hearing instrument; **and**

2.[~~and~~] Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of:

1. $150 for the first (one (1) ear) hearing instrument; **and**

2.[~~and~~] Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument **if**[~~when~~] two (2) hearing instruments are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for the hearing instrument.

(2) If a manufacturer of a hearing instrument billed to the department has not submitted a price schedule which includes the manufacturer's invoice price for the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The lowest price submitted for a comparable hearing **instrument**[~~aid~~] plus a professional fee of:

1. $150 for the first (one (1) ear) hearing instrument; **and**

2.[~~and~~] Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument **if**[~~when~~] two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of:

1. $150 for the first (one (1) ear) hearing instrument; **and**

2.[~~and~~] Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date; or

(c) The lowest suggested retail price submitted **by a manufacturer** for a comparable **instrument**[~~aid~~].

Section 4.[~~3.~~] Replacement Cord Reimbursement. The department shall reimburse for a replacement cord[~~:~~

~~(1)~~]at the specialist in hearing instruments' cost plus a professional fee set **at $21.50**[~~; and~~

~~(2) Not to exceed the fixed upper limit~~].

Section 5.[~~4.~~] Hearing Instrument Repair Reimbursement. The department shall reimburse a specialist in hearing instruments for a hearing instrument repair:

(1) On the basis of the manufacturer's charge for repair or replacement of parts;

(2) Plus the specialist in hearing instruments' cost for postage and insurance relative to the repair;

(3) Plus a professional fee **of $21.50**; and

(4) Not to exceed the **price of a new hearing instrument**[~~fixed upper limit~~].

Section 6.[~~5.~~] Appeals. A provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671[~~, Provider enrollment, disclosure, and documentation for Medicaid participation~~]. [~~(3) An audiologist shall be entitled to the same dispensing fee for a hearing aid as shown in Section 2 of this administrative regulation.~~

~~(4) Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.~~

~~Section 2. Hearing Aid Dealers.~~

~~(1) If the manufacturer of the hearing aid billed to the program has submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:~~

~~(a) That dealer price in the price schedule plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;~~

~~(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or~~

~~(c) The suggested retail price submitted by the manufacturer for that aid.~~

~~(2) If the manufacturer of the hearing aid billed to the program has not submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:~~

~~(a) The lowest dealer price submitted for a comparable hearing aid plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;~~

~~(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or~~

~~(c) The lowest suggested retail price submitted for a comparable aid. A comparable aid is defined as an aid falling within the general classifications of fitting type; i.e. body, behind-the-ear, in-the-ear, eyeglasses.~~

~~Section 3. Cords. The cabinet shall make payment for a replacement cord at the dealer's cost, plus a professional fee set at the fixed upper limit.~~

~~Section 4. Hearing Aid Repairs. The cabinet shall reimburse a hearing aid dealer for a hearing aid repair on the basis of the manufacturer's charge for repair or replacement of parts, plus the dealer's cost for postage and insurance relative to the repair, plus a professional fee set at the fixed upper limit.~~]

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRS, February 11, 2008)

907 KAR 1:054. Primary care center and federally-qualified health center services.

RELATES TO: KRS 205.520, 310.005, 314.011, 335.100, 42 C.F.R. 400.203, 405.2401, 2412-2416, 2446, 2448, 2450, 2452, 441 Subpart E and F, 447.53, 42 U.S.C. 1395x(aa), 42 U.S.C. 1396d

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

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004 reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520(3) authorizes [~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. [~~Primary care centers (as defined by the Health Certificate of Need and Licensure Board) and federally-qualified health centers represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky.~~] This administrative regulation establishes [~~, therefore, sets forth~~] the provisions relating to primary care center and federally-qualified health center services for which payment shall be made by the Medicaid Program on [~~Medical Assistance Program in~~] behalf of both the categorically needy and medically needy.

Section 1. (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(2) "Clinical pharmacist" means a licensed pharmacist whose scope of service includes taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, or surveillance for adverse reactions and drug interactions.

(3) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

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

(5) "Emergency condition" means a condition or situation requiring an emergency service pursuant to 42 C.F.R. 447.53.

(6) "Federally-qualified health center" or "FQHC" is defined by 42 U.S.C. 1396d(l)(2)(B).

(7) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(8) "Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

(9) "Nutritionist" is defined by KRS 310.005(4).

(10) "Physician" is defined by **KRS 205.510(11) and** 42 C.F.R. 405.2401(b).

(11) "Physician assistant" is defined by **KRS 311.840(3) and** 42 C.F.R. 405.2401(b).

(12) "Primary care center" or "PCC" means an entity meeting the primary care center requirements established in 902 KAR 20:058.

(13) "State plan" is defined by 42 C.F.R. 400.203.

Section 2. Primary Care Center Covered Services. (1) The department shall cover, and a primary care center shall provide, the following services:

(a) Medical diagnostic or treatment services provided by a physician, advanced registered nurse practitioner, or a physician assistant if licensed under state authority;

(b) Treatment of injuries or minor trauma;

(c) Prenatal or postnatal care;

(d) Preventive health services including well-baby care, well-child care, immunization, or other preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource **if**[when] services necessary to the health of the patient are not provided directly by the center; and

(f) Health education, including distribution of written material, provided by appropriate personnel to local school systems, civic organizations, or other concerned local groups.

(2) The department shall cover the following services and a primary care center shall provide at least two (2) of the following services:

(a) Dental services;

(b) Optometric services;

(c) Family planning services **listed and as limited in 907 KAR 1:048**[:

1. Listed inSection 1 of 907 KAR 1:048, Family planning services; and

2. As limited in 907 KAR 1:048, Family planning services, Section 2];

(d) Home health services listed and as limited in 907 KAR 1:030, [Home health agency services];

(e) Social services counseling;

(f) Pharmacy services which shall meet the coverage criteria established in 907 KAR 1:019[, Outpatient Pharmacy Program];

(g) Nutritional services provided by a nutritionist, including individual counseling relating to nutritional problems or nutritional education or group nutritional services; or

(h) Nurse midwifery services which shall be provided:

1. As a program including prenatal services to expectant mothers, delivery or postnatal services; and

2. By a nurse midwife.

(3) The department shall cover, and a primary care center may[, but is not required to] provide[,] the following services:

(a) Excluding institutional care, other state plan services;

(b) Holding or observation accommodations;

(c) Outreach services provided as a package structured to identify health care needs in the service area;

(d) Clinical pharmacist services;

(e) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner within the provider's legally authorized scope of service;

(f) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415; or

(g) Services or supplies **incidental**[incident] to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R.

Section 3. Federally-qualified Health Center Covered Services. A federally-qualified health center shall provide:

(1) Federally-qualified health center services pursuant to 42 U.S.C. 1395x(aa)(3);

(2) Federally-qualified health center services pursuant to 42 U.S.C. 1396d(l)(2)(A);

(3) Other Medicaid-covered ambulatory outpatient services established in the state plan; or

(4) Any combination of the services described in subsections (1), (2), and (3) of this section.

Section 4. Drugs for Specified Immunizations. The Cabinet for Health and Family Services shall provide free, upon request, drugs necessary for the following immunizations:

(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral, any type (OPV); or

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. Coverage Limits. (1)(a) **Except as established in subsection (2) of this section,** pharmacy service coverage[, except as established in subsection (2) of this section,] shall be limited to drugs covered pursuant to 907 KAR 1:019[, Outpatient pharmacy program].

(b) A drug or biological not covered through the department's pharmacy program shall be covered if necessary for treatment of an emergency condition.

(2) Laboratory service coverage shall be limited to:

(a) Services provided directly by a PCC or FQHC; or

(b) If purchased, other laboratory services covered pursuant to 907 KAR 1:028[, Other laboratory and x-ray services].

(3) Dental service coverage shall be limited to dental service coverage pursuant to 907 KAR 1:026[, Dental services].

(4) Vision service coverage shall be limited to vision service coverage pursuant to 907 KAR 1:038[, Hearing and Vision Program services].

(5) Audiology service coverage shall be limited to hearing service coverage pursuant to 907 KAR 1:038[, Hearing and vision program services].

(6) An abortion or sterilization service shall be:

(a) Allowed in accordance with:

1. 42 C.F.R.441, Subpart E or Subpart F**; and**

2. KRS 205.010(3), 205.510(5), and 212.275(3); and

(b)[and] Covered within the scope and limitations of federal law, federal regulations, and state law.

(7) Durable medical good and prosthetic coverage shall be limited to durable medical good or prosthetic coverage pursuant to 907 KAR 1:479[, Durable medical equipment covered benefits and reimbursement] or 907 KAR 1:030[, Home health agency services and reimbursement].

(8) A holding or observation accommodation shall be covered:

(a) For no more than twenty-four (24) hours; and

(b) If:

1. The recipient's medical record:

a. Documents the appropriateness of the holding or observation accommodation; and

b. Contains a statement of conditions observed and treatment rendered during the holding time;

2. A physician:

a. Determines that the holding or observation accommodation is necessary; and

b. Is on call at all times when a recipient is held beyond the regularly scheduled hours of the center; and

3. A licensed nurse is on duty during the time the recipient patient remains beyond regularly-scheduled hours.

(9) A radiology procedure shall be covered if provided by a licensed practitioner of the healing arts or by an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services shall not be covered as PCC or FQHC services:

(1) Services provided in a hospital as defined in 42 U.S.C. 1395x(e);[or]

(2) Institutional services;

(3) Housekeeping, babysitting, or other similar homemaker services; or

(4) Services which are not provided in accordance with restrictions imposed by law or administrative regulation. [As used in this administrative regulation, the following definitions apply: (1) Basic services. Those services which shall be provided by the primary care center for it to be considered a primary care center by the cabinet;

(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet shall make payment when appropriately provided by the primary care center;

(3) Element. A specific subprogram within the Medical Assistance Program; for example, dental services is a subprogram or element of the Medical Assistance Program;

(4) Requirements for program participation. Those requirements of law or administrative regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers shall comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.]

~~Section 2. Requirement for Participation. Each primary care center shall be required tomeet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that the standards are met and that the provider complies with all requirements for program participation. Each federally-required health center shall be required to meet appropriate licensure standards (whether as a primary care center or other health facility) and shall in addition be receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act or be determined by the Secretary, United States Department of Health and Human Services to meet the requirements for receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act.~~

~~Section 3. Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services as specified in subsection (1) of this section, and may provide one or more of the supplemental services. Each federally-qualified health center shall be entitled to provide the services described in the Social Security Act at Section 1861(aa)(1) and any other ambulatory services offered on an outpatient basis which are included in the Medicaid state plan.~~

~~(1) Basic services which shall be provided by primary care centers.~~

~~(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority.~~

~~(b) Treatment of injuries and minor trauma;~~

~~(c) Prenatal and postnatal care;~~

~~(d) A program of preventive health services which shall include well-baby care, well-child care, and immunization, and which may include other types of preventive care;~~

~~(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;~~

~~(f) Health education services. These services shall provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.~~

~~(g) The primary care center shall provide directly at least two (2) of the following additional professional services:~~

~~1. Dentist;~~

~~2. Optometrist;~~

~~3. Family planning services. These services shall be provided as a package which shall include those services required under the family planning element of the Medical Assistance Program;~~

~~4. Home health services. These services shall include the same services as provided under the home health element of the Medical Assistance Program;~~

~~5. Social services counseling. This shall include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services shall be performed by a licensed, graduate, or certified social worker;~~

~~6. Pharmacy services. These services shall meet the standards of the pharmacy component of the Medical Assistance Program;~~

~~7. Nutritional services. These services shall include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services shall be performed by a professional nutritionist; and~~

~~8. Nurse midwifery services. These services shall be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services shall be performed by a certified nurse midwife.~~

~~(2) Supplemental services which may be provided by primary care centers.~~

~~(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;~~

~~(b) Holding/observation accommodations;~~

~~(c) Any of the types of service in subsection (1)(g) of this section, which are not provided as basic services;~~

~~(d) Outreach services. These services shall be provided as a package structured to identify health care needs in the service area; and~~

~~(e) Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, and surveillance for adverse reactions and drug interactions.~~

~~Section 4. Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers and, effective April 1, 1990, federally-qualified health centers, will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:~~

~~(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);~~

~~(2) Measles, mumps, and rubella virus vaccine, live (MMR);~~

~~(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and~~

~~(4) Hemophilus B conjugate vaccine (HBCV).~~

~~Section 5. Limitations on Services. The following limitations are applicable to specified services: (1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;~~

~~(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment [of emergency cases;~~

~~(3) Laboratory services are limited to those Procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;~~

~~(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program;~~

~~(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;~~

~~(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;~~

~~(7) Abortion and sterilization services shall be performed in accordance with guidelines specified by the cabinet;~~

~~(8) Durable medical goods and prosthetics are limited to those covered under the durable medical equipment or home health element of the Medical Assistance Program;~~

~~(9) Mental health services are limited to emergency services and appropriate referral;~~

~~(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:~~

~~(a) The patient's record shall document the appropriateness of such utilization;~~

~~(b) The physician shall make the decision that such utilization is necessary;~~

~~(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;~~

~~(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;~~

~~(e) A statement of conditions observed and treatment rendered during the holding time shall be entered in the patient's medical record;~~

~~(11) Radiology procedures shall be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.~~

~~Section 6. Noncovered Services. The following services are specifically excluded from coverage as primary care center or federally-qualified health center services:~~

~~(1) All Institutional services;~~

~~(2) Housekeeping, babysitting, and other homemaker services of like nature;~~

~~(3) Services which are not provided in accordance with restrictions imposed by law or administrative regulation.~~

~~Section 7. The provisions of this administrative regulation as amended shall be effective with regard to services provided on or after April 1, 1990.~~]

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY November 15, 2007
FILED WITH LRC: November 20, 2007 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRS, February 11, 2008)

907 KAR 1:082. Rural health clinic services.

RELATES TO: KRS 205.520, 314.011, 319.050, 335.100, 42 C.F.R. 400.203, 42 C.F.R. 405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 440.20, 42 C.F.R. 491.1-491.11, 42 U.S.C. 1395x(aa) and (hh)

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

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS Chapter 205.520(3) authorizes [~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [~~sets forth~~] the provisions relating to coverage of rural health clinic services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program on behalf of both categorically needy and medically needy.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" is defined by KRS Chapter 314.011(7).

(2) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

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

(4) "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(5) "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(6) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(7) "Medically necessary" means that a covered benefit or service is necessary in accordance with the provisions of 907 KAR 3:130,[~~Medical necessity and clinically appropriate determination basis.~~] Section 2.

(8) "Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

(9) **"Other ambulatory services" is defined by 42 C.F.R. 440.20(c).**

(10) "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

(11)[~~(10)~~] "Physician" is defined by **KRS 205.510(11) and** 42 C.F.R. 405.2401(b).

(12)[~~(11)~~] "Physician assistant" is defined by **KRS 311.840(3) and** 42 C.F.R. 405.2401(b).

[~~(12) "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).~~]

(13) "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

(14) "State plan" is defined by 42 C.F.R. 400.203.

(15) "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

Section 2. Covered Services. The department shall cover the following medically necessary rural health clinic services furnished by an RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b)1. Performs the services in an RHC; or

2. Is compensated under an agreement with an RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant, advanced registered nurse practitioner, or nurse midwife who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician;

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse, licensed practical nurse, or a licensed vocational nurse who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC;

(6) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner if the services are:

(a) Provided by an individual who is employed by or furnishes services under contract to the RHC; and

(b) [~~Are~~]Within the provider's legally-authorized scope of practice;

(7) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452; and

(8) Other ambulatory services as established in the state plan.

Section 3. Provision of Services. An RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

Section 4. Immunizations. An RHC **shall**[~~may~~] provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); **or**[~~and~~]

(4) Hemophilus B conjugate vaccine (HBCV). [~~Conditions of Participation. Each rural health clinic wishing to participate as a rural health clinic in the Medical Assistance Program must be certified as a rural health clinic provider pursuant to Title XVIII of the~~

~~Social Security Act in accordance with conditions set forth at 42 C.F.R. Part 481.~~

~~Section 2. Conditions of Coverage. Each participating rural health clinic may provide for eligible medical assistance recipients the same services it may provide to Medicare recipients, i.e., physicians' services, nurse practitioners' services, and, where permitted under state law, physicians' assistants' services. In addition, rural health clinics may provide any other ambulatory service covered under the Medical Assistance Program so long as the rural health clinic meets the conditions for participation for that service element and provides the services in accordance with the applicable state administrative regulation covering that service; except, however, the rural health clinic need not be certified or licensed as the other type of provider (except to the extent provided for and/or required by law), nor have a separate participation agreement with the Medical Assistance Program for the provision of that type of service.~~

~~Section 3. Immunizations. Effective with regard to services provided on or after October 1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations from the Department for Public Health free to provide immunizations for Medicaid recipients. The specified immunizations are:~~

~~(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);~~

~~(2) Measles, mumps, and rubella virus vaccine, live (MMR);~~

~~(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and~~

~~(4) Hemophilus B conjugate vaccine (HBCV).~~]

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, February 11, 2008)

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, **1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj**[~~b, c, d, o, r-6, r-8, 1397aa-1397jj, 42 U.S.C. 1396a(10)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D), 1396d(a)(4)(C), 1396d(o), 1396u-1~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.51, 447.53, 447.54, 447.55, 447.57, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)[~~, Pub. L. 106-170, 109-171~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments or other similar charges for Medicaid recipients. KRS 205.6485(1)**(c)** requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program. 42 U.S.C. 1396r-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance. This administrative regulation establishes the provisions relating to imposing and collecting copayments, coinsurance and premiums from certain recipients.

Section 1. Definitions. (1) "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(3) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

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

(5) "Drug" means a covered drug provided in accordance with 907 KAR 1:019 for which the Department for Medicaid Services provides reimbursement.

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of Title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(8) Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP **benefits** and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP **benefits** and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP **benefits** and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP **benefits** and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP **benefits**, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP **benefits**, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are

eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;[~~or~~]

(h) Pregnant women; or

(i) Medicaid works individuals.

(9)[~~(8)~~] "KCHIP" means the Kentucky Children's Health Insurance Program.

(10)[~~(9)~~] "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(11)[~~(10)~~] "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(12) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving **supplemental**[~~supplement~~] security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets **the** income standards established in 907 KAR 1:640, [~~Income standards for Medicaid~~]; and

(e) Meets **the** resource standards established in 907 KAR 1:645[~~, Resource standards for Medicaid~~].

(13)[~~(11)~~] "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(14)[~~(12)~~] "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15)[~~(13)~~] "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1.

(16)[~~(14)~~] "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists which has a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate.

(17)[~~(15)~~] "Premium" means an amount paid periodically to purchase health care benefits.

(18)[~~(16)~~] "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with 907 KAR Chapters 1 through 4.

(19)[~~(17)~~] "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earning disregards in accordance with 907 KAR 1:011, Section 5(8)(b).

Section 2. Comprehensive Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the comprehensive choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed $20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed $20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of $6	No deduction
DMEPOS	3% coinsurance up to a maximum of $15 per item	The amount of the coinsurance or, if applicable, $15
Podiatry office visit	$2 copayment	Full amount of the copayment
[~~Ophthalmological or optometric office visit (99000 series evaluation and management codes)~~]	[~~$2 copayment~~]	[~~Full amount of the copayment~~]

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the comprehensive choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the comprehensive choices benefit plan.

Section 3. Family Choices Copayments and Coinsurance. (1)(a) **Except for an individual excluded in accordance with Section 6(1) of this administrative regulation, only KCHIP children**[~~Only KCHIP children, except for any individual excluded in accordance with Section 6(1),~~] shall be family choices individuals subject to copayments or coinsurance.

(b) An individual referenced in paragraph (a) of this subsection shall pay the copayment or coinsurance amounts established in the following table, along with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Allergy service or testing (no copayment exists for injections)	$2 copayment	Full amount of copayment
Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists	$1 copayment	Full amount of copayment
Preferred brand name drug	$2 copayment	Full amount of copayment
Nonpreferred brand name drug	$3 copayment	Full amount of the copayment
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of $6	No deduction

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the family choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the family choices benefit plan.

Section 4. Global Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the global choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance	Copayment or Coinsurance Amount Deducted from Provider Reimbursement
Acute inpatient hospital admission	$50 copayment	Full amount of copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of copayment
Laboratory, diagnostic or radiology service	$3 copayment	Full amount of copayment
Physician services	$2 copayment	No deduction
Visit to a rural health clinic, a primary care center, or a federally qualified health center	$2 copayment	Full amount of copayment
Dental office visit	$2 copayment	No deduction
Physical therapy	$2 copayment	Full amount of the copayment
Speech therapy	$1 copayment	Full amount of the copayment
Chiropractic office visit	$2 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed $20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed $20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of $6	No deduction
DMEPOS	Three (3) percent coinsurance not to exceed $15 per item	The amount of the coinsurance or, if applicable, $15
Podiatry office visit	$2 copayment	Full amount of the copayment
Ophthalmological or optometric office visit (99000 series evaluation and management codes)	$2 copayment	Full amount of the copayment

(2) Physician services shall:

(a) Include care provided by a physician, a certified pediatric and family nurse practitioner, a nurse midwife, an advanced registered nurse practitioner, or a physician assistant; and

(b) Not include a visit to a federally-qualified health center, rural health clinic, or a primary care center.

(3) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(4) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(5) If a service or benefit is not listed in the global choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service for an individual in the global choices benefit plan.

Section 5. Optimum Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the optimum choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	$2 copayment	Full amount of the copayment
Nonpreferred brand	5% coinsur-	Full amount of the

name drug for a recipient who does not have Medicare Part D drug coverage	ance, not to exceed $20 per non-preferred brand name drug prescription	coinsurance, not to exceed $20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of $6	No deduction
DMEPOS	3% coinsurance up to a maximum of $15 per item	The amount of the coinsurance or, if applicable, $15
Podiatry office visit	$2 copayment	Full amount of the copayment
[~~Ophthalmological or optometric office visit (99000 series evaluation and management codes)~~]	[~~$2 copayment~~]	[~~Full amount of the copayment~~]

(2) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or

(b) $225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the optimum choices benefit plan.

Section 6. Copayment, Coinsurance and Premium General Provisions and Exclusions. (1) The department shall impose no cost sharing for the following:

(a) A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19)**, and who is** required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;

(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income;

(c) A service furnished to a pregnant woman;

(d) A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);

(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

(f) An emergency service as defined by 42 C.F.R. 447.53;

(g) A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or

(h) A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).

(2) The department has determined that any individual liable for a copayment, coinsurance amount or premium shall:

(a) Be able to pay a required copayment, coinsurance amount or premium; and

(b) Be responsible for a required copayment, coinsurance or premium.

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment or coinsurance amount for a recipient.

(4) A parent or guardian shall be responsible for a copayment, coinsurance amount or premium imposed on a dependent child under the age of twenty-one (21).

(5) Provisions regarding a provider's ability to deny a service or benefit based on a recipient's failure to make a required copayment or coinsurance payment shall be as established in KRS 205.6312(4) and 2006 Ky. Acts ch. 252 and in accordance with **42 U.S.C. 1396o-1**[~~Pub.L. 109-171~~].

(6) A provider:

(a) Shall collect from a recipient the copayment, coinsurance amount, or premium as imposed by the department for a recipient in accordance with this administrative regulation;

(b) Shall not waive a copayment, coinsurance amount, or premium obligation as imposed by the department for a recipient; and

(c) May collect a copayment, coinsurance amount or premium at the time a benefit is provided or at a later date.

(7) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of:

(a) The family's average gross monthly income; or

(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(9) The department shall not increase its reimbursement to a provider to offset an uncollected copayment, coinsurance amount or premium from a recipient.

Section 7. Premiums for KCHIP - Separate Program Recipients.

(1) A family with children participating in the KCHIP-Separate Program shall pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP-Separate Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.

(3) Retroactive eligibility as described in 907 KAR 1:605, Section 2(3), shall not apply to a recipient participating in the KCHIP-Separate Program.

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(b)1. A KCHIP-Separate Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP-Separate Program recipient shall not be required to pay the missed premium before reenrolling.

Section 8. Premiums for Transitional Medical Assistance Recipients. (1) A family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, shall pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month; or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or
2. Failure to receive the billing notice.

Section 9. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid works individual shall[~~be required to~~] pay a monthly premium **that is:**

1. Based on income used to determine eligibility for the program**; and**

2. Established in subsection (2) of this section.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100% but no more than 150% of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150% but no more than 200% of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200% but no more than 250% of the FPL.

(2) An individual whose family income is equal to or below 100% of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid works individual shall [~~be required to~~] begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in **subsection**[~~paragraph~~] (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 1:605,[~~Medicaid procedures for determining initial and continuing eligibility,~~] Section 2(3) shall not apply to a Medicaid works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid works individual shall not be required to pay the missed premium before reenrolling.

Section 10. Notices and Collection of Premiums. (1) Premiums shall be collected in accordance with Sections 7**, 8, and 9**[~~and 8~~] of this administrative regulation.

(2) The department shall give advance written notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full; and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

Section 11.[~~10.~~] Provisions for Recipients in Medicaid-Managed Care. (1) A managed care entity:

(a) Shall not impose on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705 a copayment, coinsurance or premium that exceeds a copayment, coinsurance or premium established in this administrative regulation; and

(b) May impose upon a recipient referenced in paragraph (a) of this subsection:

1. A lower copayment, coinsurance or premium than established in this administrative regulation; or

2. No copayment, coinsurance or premium.

(2) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6) shall not apply to a recipient required to pay a premium pursuant to Section 7 of this administrative regulation.

Section 12.[~~11.~~] Freedom of Choice. In accordance with 42 C.F.R. 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

Section 13.[~~12.~~] Notice of Discontinuance, Hearings, and Appeal Rights.

(1) The department shall give written notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section **7, 8, or 9**[~~7 or 8~~] of this administrative regulation using the new income level.

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section **7(4)(a), 8(2), or/9(6)**[~~7(4)(a) or 8(2)~~] of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

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CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physicians and Specialty Services
(As Amended at ARRS, February 11, 2008)

907 KAR 1:631. Reimbursement of Vision Program services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.40, 440.60, 447 Subpart B, 42 U.S.C. 1396a-d

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

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [~~the method for determining a~~] reimbursement provisions for vision services[~~for a Vision Program service~~].

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Global Insight Index" means an indication of changes in health care costs from year to year developed by Global Insight.

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

(4) "Ophthalmic dispenser" means a physician, optician, or optometrist, who is licensed to prepare and dispense lenses and eyeglasses in accordance with an original, written prescription.

(5)[~~(3)~~] "Resource-based relative value scale unit" or "RBRVS unit" means a value based on the service which takes into consideration the practitioners' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) With the exception of materials or a laboratory service, reimbursement for a covered service, within the optometrist's scope of licensure, shall be based on the optometrist's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the Kentucky Medicaid fee schedule, specified in 907 KAR 3:010, Section **3**[~~2(2)~~][~~2(1)~~], developed from a resource-based relative value scale (RBRVS) on parity with physicians.

(2) If an RBRVS based fee has not been established, the department shall set a reasonable fixed upper limit for the procedure. The upper limit shall be determined following a review of rates paid for the service by three (3) other sources. The average of these rates shall be compared with similar procedures paid by the department to set the upper limit for the procedure.

(3) With the exception of the following dispensing services, the department shall use the Kentucky conversion factor for "all **nonanesthesia related**[~~other~~] services" as established in 907 KAR 3:010, Section 3(2)(b)[~~2(2)~~]:

(a) Fitting of spectacles;

(b) Special spectacles fitting; and

(c) Repair and adjustment of spectacles.

(4) Reimbursement for a dispensing service fee or a repair service fee shall be as follows:

Procedure	Upper Limit
92340 (Fitting of spectacles)	$33
92341 (Fitting of spectacles)	$38
92352 (Special spectacles fitting)	$33
92353 (Special spectacles fitting)	$39
92370 (Repair & adjust spectacles)	$29

(5) The department shall:

(a) Reimburse for:

1. A single vision lens at twenty-eight (28) dollars per lens;

2. A bifocal lens at forty-three (43) dollars per lens; and

3. A multi-focal lens at fifty-six (56) dollars per lens; and

(b) Annually adjust the rates established in paragraph (a) of this subsection by the Global Insight Index.

(6)(a) The department shall reimburse for frames or a part of frames (not lenses) [~~Reimbursement for eyeglasses or a part of eyeglasses shall be made~~] at the optical laboratory cost of the materials not to exceed the upper limit for materials as established by the department.

(b) The upper payment limit for frames shall be fifty (50) dollars.

(c) An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(7)(a)[~~(6)~~] Reimbursement for a covered clinical laboratory service shall be based on the Medicare allowable payment rates.

(b) For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. Reimbursement for a covered service within the ophthalmic dispenser's scope of licensure shall be in accordance with Section 2 of this administrative regulation.

Section 4. Reimbursement Limitations. (1) A telephone consultation shall be excluded from payment.

(2) Contact lenses shall be excluded from payment.

(3) Safety glasses shall be covered if proof of medical necessity is documented.

(4) A prism, if medically necessary, shall be added within the cost of the lenses.

(5) A press-on prism shall be excluded from payment.

Section 5. Third Party Liability. Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

Section 6. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

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CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management
(As Amended at ARRS, February 11, 2008)

907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. **1382a,** 1396jj(b), [~~1382a,~~] 1397aa, 9902(2)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, **1396b, 1396d, 1397aa**[~~b, d, 1397aa, Pub. L. 106-170~~]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Child" means a person who:

(a)1.a. Is under the age of eighteen (18); or

b. Is under the age of nineteen (19) if the person is:

(i) In high school or the same level of vocational or training school; and

(ii) Expected to graduate before or during the month of his 19th birthday;

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(4) "Family alternatives diversion payment" means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.

(5) [~~"Federal register" means the daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.~~]

~~(6)~~] "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(6)[~~(7)~~][~~(6)~~] "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pen-

sion, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.

(7)[~~(8)~~][~~(7)~~] "Lump sum income" means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, unemployment insurance, or workman's compensation;[,] back pay from employment;[,] money received from an insurance settlement, gift, inheritance, or lottery winning;[~~, noncontinuing~~] proceeds from a bankruptcy proceeding; or[,] money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(8)[~~(9)~~] "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving **supplemental**[~~supplement~~] security income;

(b) Is a least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets **the** income standards established in this administrative regulation; and

(e) Meets **the** resource standards established in 907 KAR 1:645[~~, Resource standards for Medicaid~~].

(9)[~~(10)~~][~~(8)~~] "Minor parent" means a parent under the age of twenty-one (21).

(10)[~~(11)~~][~~(9)~~] "Official poverty income guidelines" means the poverty income guidelines which are:

(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and

(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.

(11)[~~(12)~~][~~(10)~~] "SSI" means Supplemental Security Income Program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011,[~~Technical eligibility requirements,~~] income shall be determined by comparing adjusted income as required by Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600	$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):

(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines;

(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;

(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines;

(d) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397jj(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 9 of this administrative regulation;

(e) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy;

(f) A targeted low-income child as specified in 907 KAR 1:011, [~~Technical eligibility requirements,~~] Section 2(3)(h), shall have family income not exceeding 150 percent of the official poverty income guidelines.

(3) The following special income limits and provisions shall be applicable for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual, or Medicare qualified individual.

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 C.F.R. 435.135.[~~added to scale.~~]

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual's spouse shall not exceed $45,000 per year;

(b) A Medicaid works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars **monthly**; and

(c) The combination of earned and unearned income for a Medicaid works individual **shall be less than 250% of the official poverty income guidelines**[~~must be less than 250% of the federal poverty level as listed and updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)~~].

Section 3. Income Disregards. In comparing income with the scale established in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In an AFDC or family related Medicaid case, the standard work expense of an adult member or out-of-school child shall be deducted from gross earnings. For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month. Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) In an AFDC or family related Medicaid case, a dependent child care work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011,[~~Technical eligibility requirements,~~] Section 5(9)(b), for full-time **or**[~~and~~] part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The dependent child care work expense allowed shall not exceed, per month:

1. $200 for full-time or part-time employment per child under age two (2); and

2. $175 for full-time employment or $150 for part-time employment per:

a. Child age two (2) or above; or

b. Incapacitated adult.

(3) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.

(4) Income disregards. **The income disregards**[~~for~~]:

(a)[~~In~~] an ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b)**; and**[~~.~~]

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b)[~~, income disregards shall be those applicable in the federal SSI program established in 42 U.S.C. 1382a(b)~~].

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the requirements established in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time;

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability;

(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability;

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household;

(5) Income of a stepparent or grandparent receiving SSI; and

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. For a Medicaid case, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver.

(5) A social security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual or Medicare qualified individual until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be excluded[~~exempted from consideration by the department~~].

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. 435.122, any payment received by a person with hemophilia from a class action **lawsuit**[~~law suit~~] entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) For an AFDC or family-related Medicaid case, a Medicaid recipient shall have the option to receive a one (1) time exclusion of two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.

(17) For an AFDC-related or a family-related Medicaid case, interest and dividend income shall be excluded.

(18) All monies received by an individual from the Tobacco Settlement between the states and tobacco manufacturers shall be excluded.

(19) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1936p(d)(4) and 907 KAR 1:650,[~~Trust and transferred resource requirements for Medicaid.~~] Section 3(5), shall be excluded.

Section 7. Consideration of State Supplementary Payments. For an individual receiving a state supplementary payment, that portion of the individual's income which is in excess of the basic maintenance standard (established in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit or state supplementary payment.

(b) An individual who would otherwise be eligible for an SSI benefit or state supplementary payment shall remain eligible for the

full scope of program benefits with no spend-down requirements, as established in Section 9 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 9. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) An individual with income in excess of the basic maintenance scale established in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 15, 2007
FILED WITH LRC: November 20, 2007 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, February 11, 2008)

907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, **1396b, 1396d, 1397jj(b), 1397p**[~~b, d, 1397jj(b), p, Pub. L. 109-171~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435.840, 435.843, and 42 U.S.C. 1396a(l)(3), **1396d**[~~d, Pub. L. 106-170~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

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

(3) "Homestead" means property which an individual:

(a) Has an ownership interest in; and

(b) Uses as his or her principal place of residence.

(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016[~~, Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP)~~].

(5) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.

(7) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving **supplemental**[~~supplement~~] security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets **the** income standards established in 907 KAR 1:640[~~, Income standards for Medicaid~~]; and

(e) Meets **the** resource standards established in this administrative regulation.

(8) "Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.

(9)[~~(8)~~] "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(10)[~~(9)~~] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(11)[~~(10)~~] "Resources" mean cash money and other personal property or real property that**:**

(a) An individual:

1. Owns; and

2.[~~(a) Owns;~~

~~(b)~~] Has the right, authority, or power to convert to cash; and

(b)[~~(c)~~] Is not legally restricted for support and maintenance.

(12)[~~(11)~~] "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy, as established in 907 KAR 1:011[~~, Technical eligibility requirements,~~] the upper limit for resources for a family size of one (1) and for a family size of two (2) shall be $2,000 and $4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or

(d) A targeted low income child, as defined in 42 U.S.C. 1397jj(b), from birth to age nineteen (19).

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient, as established in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011[~~, Technical eligibility requirements,~~] resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be $1,000.

(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds $500,000 unless:

(a) The individual has a spouse who is lawfully residing in the individual's home;

(b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or

(c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

(7) Resources for a Medicaid works individual shall not exceed $5,000 per individual or $10,000 per couple.

Section 3. Resource Exclusions. (1)(a) A homestead, household or personal effects, and farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:

1. A spouse or other dependent family member continues to reside there; or

2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

The statement shall:

a. Be signed by:

(i) The permanently-institutionalized individual;

(ii) A representative payee;

(iii) A person who has power of attorney for the individual;

(iv) The individual's guardian; or

(v) Another legal representative; and

b. Require annual renewal.

(2) For an adult Medicaid case or a Medicaid works individual:

(a)1. Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.

2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:

a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and

b. Is used in a trade or business or by the individual or member of the family group as an employee.

(b) Except as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:

(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Nonhome property, which was previously the homestead property of a permanently-institutionalized individual, shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.

2. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.

3. Reasonable effort to sell the property shall consist of:

a. Listing the property with a real estate agent if the agent:

1. Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and

2. Advertises the property in the local newspaper or on local television or radio stations; or

b. A combination of at least two of the following actions:

1. Advertising the property in the local newspaper or on local television or radio stations;

2. Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;

3. Distributing fliers advertising the property for sale;

4. Posting notices regarding availability of the property on community bulletin boards; or

5. Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, $1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(9) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.

(10) Disaster relief assistance shall be excluded from consideration.

(11) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(14) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(15) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(16) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(17) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(18) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(19) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(20) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(21) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(22) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

Section 4. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY: November 15, 2007
FILED WITH LRC: November 20, 2007 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, February 11, 2008)

907 KAR 1:900. KyHealth Choices benefit plans.

RELATES TO: KRS 205.520, 205.560, 205.6312, 205.6481-6497, 205.8451, 319A.010, 327.010, 334A.020, 20 C.F.R. 416.2001, 42 C.F.R. 433.56, 435, 436.3, 440.30, 440.40, 440.60, 440.70, 440.110, 440.120, 440.130, 440.170, 441.20, 441.21, 441.35, 441.40, 457.310, 45 C.F.R. 233.100, 42 U.S.C. 416, 423, 1382c, 1383c, 1396a, b, c, d, o, r-6, r-8, 1396a(10)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D), 1396d(a)(4)(C), 1396d(o), 1396u-1, 1397aa,

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~, Pub. L. 106-170, 109-171~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Medicaid Program KyHealth Choices benefit plans.

Section 1. Definitions. (1) "Benchmark plan" means the Global Choices **benefit plan**.

(2) "Benefit plan" means the health plan provided to recipients under comprehensive choices, family choices, global choices, **or**[~~and~~] optimum choices.

(3) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and

(b) Who is seeking to qualify as a kinship caregiver.

(4) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

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

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP **benefits** and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP **benefits** and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP **benefits** and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP **benefits** and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP **benefits**, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI **benefits** and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits benefits, and do not meet nursing facility patient status criteria in accordance with 907

[~~2. SSP, and do not meet nursing facility patient status criteria in accordance with 907~~]KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; [~~or~~]

(h) Pregnant women; or

(i) Medicaid works individuals.

(8) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the Cabinet for Health and Family Services as an alternative to foster care.

(9) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

[~~(d) Unemployment of one (1) parent if both parents are in the home.~~]

(10) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving **supplemental**[~~supplement~~] security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets **the** income standards established in 907 KAR 1:640[~~, Income standards for Medicaid~~]; and

(e) Meets **the** resource standards established in 907 KAR 1:645[~~, Resource standards for Medicaid~~].

(11) "Model Waiver II" means a department program established in 907 KAR 1:595.

(12)[~~(11)~~] "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1.

(13)[~~(12)~~] "Package code" means a unique code which identifies a specific service under each benefit plan.

(14)[~~(13)~~] "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI Program in accordance with 907 KAR Chapters 1 through 4.

(15)[~~(14)~~] "SSI" means the Social Security Administration program called supplemental security income.

(16)[~~(15)~~] "SSP" means state supplemental payments for individuals who are aged, blind or disabled and in accordance with 921 KAR 2:015.

Section 2. Benefit Plan Assignment. (1)(a) The department shall assign each recipient, including those excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B), to an appropriate benefit package. The four (4) benefit plans shall**:**

1. Include[~~:~~] comprehensive choices, family choices, global choices, or optimum choices[**-**] pursuant to the definitions established in Section 1(4), (6), (7), **(12) of the administrative regulation; and**

2. Be[~~and (11)~~][~~,~~][~~and~~] based on the recipient's medical needs or circumstances.

(b) An individual excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B):

1. May enroll in the benchmark plan; and

2. Shall be subject to the cost-sharing, service limit, and any other provisions established for the benchmark plan effective beginning with the date the individual requested to be enrolled in the benchmark plan.

(2) If a recipient's medical needs or circumstances evolve to the extent another benefit plan is **a** more appropriate change, the department shall assign the recipient to the more appropriate benefit plan.

(3)(a) A recipient whose medical needs or circumstances are appropriate for the comprehensive or optimum choices benefit plan may elect to not be assigned to the comprehensive or optimum choices benefit plan.

(b) The department shall assign a recipient who elects to not be assigned to the comprehensive or optimum choices benefit plan to the global choices benefit plan, unless the individual elects to opt out of all coverage.

(4)(a) A recipient may request to be assigned to a different benefit plan by notifying the department.

(b) If a recipient requests to be assigned to a different benefit plan, the department shall examine the recipient's medical needs or circumstances and determine the appropriateness of placing the individual [~~shall be placed~~] in a different benefit plan.

Section 3. Benefit Plan Covered Services and Cost Sharing. (1) Benefit plan covered service provisions shall be as established in the respective program administrative regulations located in[~~Title~~] 907 KAR **Chapters 1 and 3**.

(2) Benefit plan cost-sharing provisions shall be as established in 907 KAR 1:604[~~, Recipient cost-sharing~~].

Section 4. Appeals. A recipient may appeal a department decision in accordance with 907 KAR 1:563[~~, Medicaid covered services hearing and appeals~~].

SHAWN M. CROUCH, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, February 11, 2008)

910 KAR 1:090. Personal care assistance services.

RELATES TO: KRS Chapter 13B, 205.455(4), **205.900-205.925**[~~900, 905, 910, 915, 920, 925~~], 337.275[~~, 29 U.S.C. 206~~] [~~205.900-205.920~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish an eligibility standard for personal care assistance services which **takes**[~~shall take~~] into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This administrative regulation establishes the Personal Care Attendant Program.

Section 1. Definitions. (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Attendant" means a person who provides personal care assistance services.

(4) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(5) "District" is defined by KRS 205.455(4).

(6) "Evaluation team" is defined by KRS 205.900(2).

(7) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(8) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program which addresses the "unique economic needs of severely physically disabled adults" pursuant to KRS 205.910(1).

(9) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(10) "Personal care assistance services" is defined by KRS 205.900(3).

(11) "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(12) "Qualified agency or organization" is defined by KRS 205.900(4).

(13) "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(14) "Severely physically disabled adult" is defined by KRS **205.900(6)**[~~205.900~~].

(15) "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(16) "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and

2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial evaluation for eligibility and a re-evaluation at least biennially by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a noninstitutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant; and

(e) Be responsible for attendant payroll reports and computing required employer tax statements.

(2) An applicant shall be accepted for service if:

(a) A program coordinator determines that the applicant is eligible to participate in the program; and

(b) Funds are available.

(3) If an applicant receives Supplemental Security Income or Medicaid health care, the applicant shall be income eligible.

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If **an applicant is not eligible pursuant to** subsections (3) or (4) of this section[~~does not apply to an applicant~~], the income eligibility standard shall be determined by a program coordinator with a DAIL-PCAP-08 Income Eligibility form as follows:

(a) **Determine the adjusted gross income by deducting**[~~Deduct from the annual gross income~~]:

1. The cost of un-reimbursed extraordinary medical expenses verified with a DAIL-PCAP-03 Authorization Statement for Extraordinary Medical Expenses, and impairment-related expenses;

2. An amount adjusted **for**[~~to a~~] family size **based on 100 percent**[~~at 200 percent~~] of the official poverty [~~income~~]guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and

3. Dependent care expenses[~~; and~~

~~(b) Subtract the subtotal from the annual gross income for adjusted gross~~].

(b)[~~(6)~~] If the adjusted gross income is less than [~~the annual~~] 200 percent of **the annual federal** poverty **guidelines**, the applicant is income eligible.

~~(c)~~[~~(7)~~] If the adjusted gross income is more than [~~the annual~~]200 percent of **the annual federal** poverty **guidelines**, the following shall be used to determine the applicant's contribution to cost of care:

1.[~~(a)~~] From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;

2.[~~(b)~~] Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;

3.[~~(c)~~] Divide the final income by fifty-two (52) weeks; and

4. Calculate the estimated cost of personal care services by multiplying the estimated[~~(d) Estimate~~] number of hours ~~of~~[~~for~~] personal care assistance services **per week** times the [~~subsidy~~]cost per hour of service.

(d)1.[~~(8)(a)~~] If the resulting monetary amount in **paragraph (c)3 of this subsection**[~~subsection (7)(c) of this section~~] is less than **the estimated cost of services calculated in paragraph (c)4 of this subsection**[~~subsection (7)(d)~~] of this section, the qualified agency shall provide the full subsidy.

2.[~~(b)~~] If the resulting monetary amount in **paragraph (c)3 of this subsection**[~~subsection (7)(c) of this section~~] is more than **the estimated cost of services calculated in paragraph (c)4 of this subsection**[~~subsection (7)(d) of this section and the cost of care is more than a qualified agency's maximum hourly rate~~], the participant shall pay the difference between the cost of **services**[~~care~~] and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria set out in subsections (3) - (5) of this section shall be applied to a current participant at the time of the participant's next re-evaluation.

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be **made** by:

(a) Self;

(b) Family;

(c) Another person; or

(d) Agency.

(2) If an opening for services is available, a program coordinator shall:

(a) Visit and assist an applicant in the completion of a DAIL-PCAP-01 Application; and

(b) Complete and have all evaluation team members sign a DAIL-PCAP-07 Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

(a) Report an evaluation team's findings and recommendations to a contract agency for final review of the applicant or participant; and

(b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

(a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and

(b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in compliance with KRS 205.905(3):

1. Whether the recommendations of the evaluation team are accepted or not accepted; and

2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on an approved waiting list and, as a vacancy occurs, be accepted for services **in priority order** based on the following categories:

(a) Emergency situation because of an eminent danger to self or at risk of institutionalization;

(b) Urgent situation because there are no community supports; and

(c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

(a) Participant considers the personal care attendant program district of origin to be his or her place of residence; and

(b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The service area of origin shall retain responsibility for:

(a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and

(b) Monthly programmatic and financial reports.

(4) The receiving service area shall forward a copy of reports to the service area of origin.

(5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.

(6) If a participant's personal care assistance services terminate, the program funding shall return to the original service **area**[~~are~~] of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

(a) Condition improved - on re-evaluation a participant is determined to need less than fourteen (14) hours of care per week;

(b) Condition worsened - on re-evaluation a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;

(c) Participant's behavior clearly presents a danger to the program coordinator or attendant;

(d) Participant does not **submit**[~~take the responsibility for submitting~~] required employer taxes to the qualified agency;

(e) Participant moves from Kentucky;

(f) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency;

(g) Participant fails to hire an attendant;

(h) Participant **dies**[~~expires~~];

(i) Participant chooses to:

1. Give up personal care assistance services; and

2. Be admitted to a long-term care facility; or

(j) Participant requests suspension of services.

(2) A nonreturn of an overpayment of services may result in services being suspended.

(3) An intentional deception to obtain services may result in services being suspended.

Section 7. Participant Responsibilities. A participant shall:

(1) **Meet the eligibility requirements**[~~Have the qualifications and capabilities in order to meet eligibility~~] to receive a subsidy **set out in**[~~required by~~] Section 2(1) of this administrative regulation;

(2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

(3) Instruct the attendant on specific personal care assistance services;

(4) Evaluate the attendant's personal care assistance services;

(5) Discuss and come to a written agreement with each attendant **about**:

(a) **What**[~~About what~~] services shall be provided; and

(b) **The terms**[~~Terms~~] of employment including:

1. Time;

2. Hours;

3. Duties; and

4. Responsibilities;

(6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;

(7) Be responsible for computing:

(a) Employee payroll;

(b) Withholdings;

(c) Actual payment of required withholdings; and

(d) Taxes appropriate to being an employer;

(8) Negotiate for room and board for an attendant as specified in Section 9(5)(a) of this administrative regulation; and

(9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

(a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;

(b) Perform personal care assistance services and other tasks that may include:

1. Turning;

2. Repositioning;

3. Transferring;

4. Assistance with oxygen;

5. Hygiene;

6. Grooming;

7. Washing hair;

8. Skin care;

9. Shopping;

10. Transportation;

11. Chores;

12. Light correspondence;

13. Equipment cleaning; and

14. Emergency procedures, if necessary;

(c) Perform tasks **consistent with the work agreement** as instructed by the participant;

(d) Report to work as scheduled;

(e) Maintain the privacy and confidentiality of the participant;

(f) **If**[~~Notify the participant at least six (6) hours in advance when~~] unable to report for work as scheduled, **notify the participant at least six (6) hours in advance unless an emergency arises**;

(g) Maintain a list of emergency numbers;

(h) Attend attendant training provided by the participant related to specific care needs;

(i) Keep a daily record of hours worked and services rendered;

(j) Submit to the participant documents and material necessary to comply with the formal payment process;

(k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;

(l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;

(m) Authorize a qualified agency to obtain [~~a~~] Kentucky Nurse Aid Abuse Registry, Central Registry and criminal background checks as specified in Section 11(6) of this administrative regulation; and

(n) Notify the program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

(2) An individual shall not be hired as an attendant **if the individual**:

(a) **Has**[~~Who has~~] not submitted to the background checks specified in subsection (1)(m) of this section;

(b) **Is**[~~Whose name is~~] on the Kentucky Nurse Aid Abuse Registry maintained in accordance with 906 KAR 1:100;

(c) **Has**[~~Who has~~] pled guilty or been convicted of committing a sex crime or violent crime; and

(d) **Is**[~~Who is~~] not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. **(1)** The amount of attendant payment determined shall be in compliance with the following:

(a)[~~(1)(a)~~] The maximum hourly subsidized rate for direct personal care assistance services shall be no more than **ten(10)**[~~150~~] percent **over**[~~of~~] the current minimum wage rate established by KRS 337.275 [~~and 29 U.S.C. 206~~].

(b) **If the hourly subsidized rate established in paragraph (a) of this subsection is in sufficient to obtain direct personal care assistance services in a specific Kentucky district, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.**

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d)[~~(c)~~] Maximum hours for direct personal care assistance services per week shall be forty (40).

(2)[~~The department shall have the flexibility of adjusting the percent established in subsection (1)(a) of this section after July 2010.~~

~~(3)~~] In an extreme situation **that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver**, a temporary waiver of maximum hours and **the resulting** cost may be granted by the contract agency.

(3)[~~(4)~~] A special night rate may be negotiated:
(a) If a participant does not:
1. Require an attendant during the day; or
2. Need direct personal care assistance services from this attendant; or
(b) To provide for caregiver respite service.
(4)(a)[~~(5)(a)~~] It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.
(b) A live-in attendant shall not be excluded from employment as a part-time attendant.
(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:
(a) A bachelor's degree with two (2) years experience working in the disability community; or
(b) Complete **fifty-four (54) semester hours**[~~two (2) years (fifty-four (54) semester hours)~~] of college **with four (4) years experience working in the disability community**;
(2) The department may waive the education requirements required by subsection (1) of this section based on consideration **of**[~~in~~] work experience involving:
(a) Interviewing;
(b) Community services work;
(c) Administrative work;
(d) Reviewing;
(e) Monitoring;
(f) Training; or
(g) **Determining**[~~Determination~~] of eligibility for human services programs.
(3) If employed, a program coordinator shall complete the following hours of training:
(a) Within thirty (30) working days of hire:
1. Complete a minimum of sixteen (16) hours orientation program training; and
2. Shadow an experienced program coordinator for one (1) to two (2) days;
(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours initial program coordination training; and
(c) Complete follow-up quarterly trainings with the department and contract agency.
(4) A program coordinator shall:
(a) Determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;
(b) Complete the application process required by Section 3(2)(a) of this administrative regulation;
(c) Maintain a waiting list; and
(d) Perform the evaluations required in Section 12(2) of this administrative regulations.
(5) A program coordinator or program coordinator's designee shall:
(a) **Identify**[~~Locate a~~] severely physically disabled **adults**[~~adult~~] who may be eligible for participation in the personal care attendant program;
(b) Prescreen an applicant for eligibility to participate in the personal care attendant program;
(c) Assist a participant in **learning** how to conduct an interview and screen a prospective attendant;
(d) Assist in or arrange for the training of the attendant, if necessary;
(e) Review with the participant the results of an evaluation or re-evaluation signed by an evaluation team;
(f) Assist the participant in completing and updating a DAIL-PCAP 09 Individual Care Plan;
(g) Assist the participant in developing a work agreement between the participant and attendant;
(h) Obtain a participant's agreement of release of information with a DAIL-PCAP-02 Authorization for Release of Confidential Information;
(i) Monitor[~~the aspects of~~] the program with each participant on a quarterly basis;
(j) Assist the participant in finding a back-up attendant for:
1. An emergency; or
2. The regular attendant's time off;
(k) Assist in the recruitment and referral of an attendant, if requested;
(l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation; and
(m) Assure that the participant:
1. Enters into agreement to pay employee taxes with a DAIL-PCAP-04 Employee Tax Agreement; and
2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:
(1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);
(2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency;
(3) Develop a procedure for:
(a) Payment of a subsidy; and
(b) Establishment of appropriate fiscal control within the qualified agency;
(4) Employ or contract for the services of a program coordinator;
(5) Oversee the training requirements for a program coordinator as specified in Section 10(3) of this administrative regulation;
(6) Obtain the following checks on a potential attendant:
1. The results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the potential attendant resided or worked outside of Kentucky during the year prior to employment;
2. Within fourteen (14) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and
3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;
(7) Report evaluation team findings and recommendations to a contract agency as specified in Section 3(3) of this administrative regulation; and
(8) Maintain participant records as required by Section 15(1) of this administrative regulation.

Section 12. Evaluation Team Members and Responsibilities. (1) An evaluation team:
(a) Shall consist of a program coordinator; and
(b) May consist of:
1. An occupational or physical therapist;
2. A registered nurse;
3. A director or executive director of the qualified agency;
4. A fiscal officer of the qualified agency;
5. A mental health provider;
6. An in-home services coordinator; or
7. Another entity involved in the participant's care.
(2) The program coordinator of the evaluation team shall complete:
(a) An applicant's initial evaluation with a DAIL-PCAP-05 Evaluation to establish eligibility pursuant to KRS 205.905(2)(b)1; and
(b) A participant's re-evaluation with a DAIL-PCAP-06 Annual Re-evaluation, at least biennially for continuing services pursuant to KRS 205.905(2)(b)2, or more frequently if changes occur in the participant's situation.

Section 13. Contract Agency Responsibilities. The contract agency shall: (1) Implement a personal care attendant program according to an approved plan;
(2) Assume fiscal accountability for state funds designated for the program;

(3) Provide necessary administrative support personnel within a contract agency office;

(4) Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

(6) Provide, in conjunction with a qualified agency, a procedure for attendant payment;

(7) Review recommendations of an evaluation team and notify a participant and qualified agency as specified in Section 3(4) of this administrative regulation;

(8) Submit monthly program reports to the department as specified in Section 15(3) of this administrative regulation; and

(9) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 14. Department Responsibilities. The department shall: (1) Provide a format for the **approved plan**[~~area plan of requirements~~] for the personal care attendant program;

(2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;

(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) the following outcomes:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan;

(4) Monitor the contract agency at least annually;

(5) Develop and revise program and fiscal requirements;

(6) Allocate available funding;

(7) Advocate for program expansion; and

(8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency and shall include:

(a) The forms specified in Section 17 of this administrative regulation;

(b) A chronological record of contacts with a:

1. Participant;

2. Family;

3. Physician; and

4. Others involved in care with quarterly monitoring reports; and

(c) An assessment record of eligibility.

(2) A program coordinator shall:

(a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and

(b) Forward a copy to the contract agency.

(3) A contract agency shall make a copy of reports on monthly activities available to the department.

Section 16. Request for Fair Hearing. An applicant or participant may request a fair hearing:

(1) In accordance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915; and

(2) Within thirty (30) days of any decision by the:

(a) Cabinet;

(b) Contract agency; or

(c) Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "DAIL-PCAP-01 Application", edition 2/08;

(b) "DAIL-PCAP-02 Authorization for Release of Confidential Information", edition 2/08;

(c) "DAIL-PCAP-03 Authorization Statement for Extraordinary Medical Expenses, edition 2/08

(d) "DAIL-PCAP-04 Employee Tax Agreement", edition 2/08;

(e) "DAIL-PCAP-05 Evaluation", edition 2/08

(f) "DAIL-PCAP-06 Annual Re-evaluation, edition 2/08;

(g) "DAIL-PCAP-07 Evaluation Team Findings and Recommendations", edition 2/08;

(h) "DAIL-PCAP-08 Income Eligibility", edition 2/08; and

(i) "DAIL-PCAP-09 Individual Care Plan", edition 2/08.

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

[~~KRS 205.910 requires the Cabinet for Health Services to establish an eligibility standard for personal care assistance services which shall take into consideration the unique economic and social needs of severely physically disabled adults. The Office of Aging Services has promulgated administrative regulations pursuant to KRS 205.920 that shall enable provisions of KRS 205.905-205.920, concerning personal care assistance services to be implemented.~~

~~Section 1. Definitions.~~

~~(1) The definition of "cabinet" is governed by KRS 205.900(1).~~

~~(2) The definition of "evaluation team" is governed by KRS 205.900(2).~~

~~(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).~~

~~(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).~~

~~(5) The definition of "secretary" is governed by KRS 205.900(5).~~

~~(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).~~

~~(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.~~

~~(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.~~

~~(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Office of Aging Services.~~

~~(10) "Authorized representatives of the cabinet" means the Executive Director of the Office of Aging Services or official designee.~~

~~(11) "Contract agency" means the agency with whom the Cabinet for Health Services has contracted to administer the personal care attendant program.~~

~~(12) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.~~

~~(13) "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which addresses the "unique economic needs of severely physically disabled adults" as governed by KRS 205.910(1).~~

~~(14) "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.~~

~~(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.~~

~~(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.~~

~~(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.~~

~~(18) "Personal care attendant" means a person who provides personal care attendant services.~~

~~(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:~~

~~(a) Activities of daily living;~~

~~(b) Instrumental activities of daily living;~~

~~(c) Routine bodily functions care (bowel and bladder);~~

~~(d) Turning;~~

~~(e) Repositioning; and~~

~~(f) If necessary, ambulation and emergency procedures.~~

~~(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.~~

~~(21) "Program coordinator" means a person who shall meet the following minimum requirements:~~

~~(a) Completion of two (2) years (fifty-four (54) semester hours) of college; or~~

~~(b) Work experience involving interviewing, community services work, administrative work, reviewing, monitoring, training or determining eligibility for human services programs shall substitute for the required college education on a year-for-year basis.~~

~~(22) "Service area" means those counties listed in the approved plan of the qualified agency or organization.~~

~~(23) "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.~~

~~(24) "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.~~]

~~Section 2. Participant Responsibilities. The participant's responsibilities shall include:~~

~~(1) Recruiting attendants;~~

~~(2) Screening attendants;~~

~~(3) Interviewing attendants;~~

~~(4) Selecting attendants;~~

~~(5) Hiring attendants;~~

~~(6) Instructing attendants on specific personal care duties;~~

~~(7) Supervising attendants;~~

~~(8) Evaluating attendant care;~~

~~(9) Firing attendants;~~

~~(10) Discussing and coming to agreement with each attendant about what services shall be provided;~~

~~(11) Keeping records and reporting to the agency attendant hours worked for payment to the attendant;~~

~~(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;~~

~~(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a signed agreement between the disabled adult and the attendant; and~~

~~(14) Coordinating with the program coordinator the aspects of program requirements.~~

~~Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:~~

~~(1) Entering into written agreement for terms of work as specified by the participant.~~

~~(2) Performing the tasks agreed on between the participant and attendant.~~

~~(3) Performing the tasks as instructed by the participant.~~

~~(4) Reporting to work as scheduled.~~

~~(5) Maintaining the privacy and confidentiality of the participant.~~

~~(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.~~

~~(7) Maintaining a list of emergency numbers.~~

~~(8) Attending attendant training related to specific care needs.~~

~~(9) Keeping a daily record of hours worked and services rendered.~~

~~(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.~~

~~(11) Meeting with participant and program coordinator for monitoring and coordinating the aspects of the program.~~

~~(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.~~

~~(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.~~

~~Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:~~

~~(1) Locating severely physically disabled persons who may be eligible for participation.~~

~~(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.~~

~~(3) Assisting the participant in how to conduct an interview and screen prospective attendants.~~

~~(4) Assisting in or arranging for the training of attendants if necessary.~~

~~(5) Reviewing with the participant the evaluation completed by the evaluation team.~~

~~(6) Assisting the participant in developing a work agreement between the disabled adult and attendant.~~

~~(7) Monitoring the aspects of the program with each participant on a quarterly basis.~~

~~(8) Assisting the participant in finding back-up attendants for emergencies or regular attendant's time off.~~

~~(9) Assisting in the recruitment and referral of personal care attendants when requested.~~

~~(10) Assuring that participants receive training in recordkeeping and tax responsibilities related to services.~~

~~(11) Completing ten (10) hours of initial care management training and follow-up training required by the cabinet.~~

~~Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:~~

~~(1) Employing or contracting with an evaluation team consisting of three (3) individuals:~~

~~(a) Social worker;~~

~~(b) An occupational or physical therapist; and~~

~~(c) A registered nurse.~~

~~(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.~~

~~(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.~~

~~(4) Employing or contracting for the services of a program coordinator.~~

~~Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:~~

~~(1) Completing the initial evaluation of applicants.~~

~~(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.~~

~~Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:~~

~~(1) Implement the personal care attendant program according to a plan approved by the Office of Aging Services.~~

~~(2) Assume fiscal accountability for the state funds designated for the program.~~

~~(3) Provide necessary administrative support personnel within the contract agency office.~~

~~(4) Provide an appeals procedure and hearing process in compliance with the requirements of 910 KAR 1:140.~~

~~(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.~~

~~(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.~~

~~(7) Review recommendations of the evaluation team regarding applicant eligibility and participant services.~~

~~(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.~~

~~(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.~~

~~(10) Submit monthly program reports to the Office of Aging Services.~~

~~(11) Maintain files and records for cabinet audit, including participant records and statistical reports.~~

~~Section 8. Office of Aging Services Responsibilities. The responsibilities of the Office of Aging Services shall include:~~

~~(1) Provide a format for the area plan of requirements for the Personal Care Attendant Program.~~

~~(2) Review proposed plans submitted by contract agencies to administer the personal care attendant program.~~

~~(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Office of Aging Services shall include the following:~~

~~(a) Approve the plan as submitted;~~

~~(b) Require the contract agency to revise the plan; or~~

~~(c) Reject the plan.~~

~~(4) Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the office.~~

~~(5) Develop and revise program and fiscal requirements.~~

~~(6) Allocate available funding.~~

~~(7) Advocate for program expansion.~~

~~(8) Provide technical assistance.~~

~~Section 9. Eligibility. To be eligible for participation in the personal attendant care services program a person shall meet:~~

~~(1) The physical eligibility standard which requires that a person shall:~~

~~(a) Be eighteen (18) years old or older;~~

~~(b) Be severely physically disabled as defined by KRS 205.900(6);~~

~~(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;~~

~~(d) Reside, or through this program be able to reside, in a non-institutional setting;~~

~~(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;~~

~~(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;~~

~~(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;~~

~~(h) Work with the program coordinator in establishing a personal care plan as the basis of agreement between the disabled person and his attendant; and~~

~~(i) Be capable of preparing attendant payroll reports and required employer tax statements.~~

~~(2) The income equity standards shall be determined by the following formula contained on a form prescribed by the cabinet:~~

~~(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.~~

~~(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.~~

~~(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.~~

~~(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.~~

~~(e) If the remaining income equals the cost of care the client is ineligible.~~

~~(f) If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.~~

~~Section 10. Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:~~

~~(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).~~

~~(2) The required contribution shall be paid to the attendant.~~

~~(3) It shall be the responsibility of the qualified agency to collect the contribution.~~

~~Section 11. Acceptance for Services. (1) A client shall be accepted for service when:~~

~~(a) It is determined that he is eligible to participate in the program; and~~

~~(b) Funds are available.~~

~~(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis. Clients who have been determined eligible for, receive personal care attendant services, and relocate to another personal care attendant service area shall be considered on a first-come basis and placed at the top of the waiting list for service.~~

~~(3) If several potential participants make application at the same time, an equitable procedure for selecting applicants shall be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Office of Aging Services.~~

~~Section 12. Relocation for Education or Training. (1) Clients who are eligible for and receive personal care attendant services but go to another personal care attendant service area to complete a training or educational course shall remain a client of the personal care attendant program service area of origin when the following conditions are met:~~

~~(a) The client considers the personal care attendant program district of origin to be his place of residence; and~~

~~(b) The client's purpose for relocation is to complete a course of education or training to increase employment skills.~~

~~(2) The receiving personal care attendant program service area shall provide courtesy monitoring to coordinate the aspects of program requirements.~~

~~(3) The personal care attendant program service area of origin shall retain responsibility for payment of subsidies for the duration of the educational or training course and when other eligibility requirements are met.~~

~~(4) The receiving service area shall forward copies of reports to the service area of origin.~~

~~(5) The service area of origin shall be responsible for payment of subsidies, monthly programmatic and financial reports.~~

~~Section 13. Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.~~

~~(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.~~

~~(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.~~

~~(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.~~

~~(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.~~

~~(6) The qualified agency shall be notified in writing as to the final determination.~~

~~(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.~~

~~(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.~~

~~Section 14. Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:~~

~~(1) The maximum hourly rate for direct personal attendant care shall be established by the Office of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).~~

~~(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.~~

~~(3) A special night rate may be negotiated when:~~

~~(a) A participant does not require an attendant during the day;~~

~~(b) A participant does not need direct personal attendant care services from this attendant;~~

~~(c) Or to provide for caregiver respite service.~~

~~(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.~~

~~Section 15. Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:~~

~~(a) Prescreening information form;~~

~~(b) Application;~~

~~(c) Income eligibility form (updated annually);~~

~~(d) Evaluation team report;~~

~~(e) Evaluation team findings and recommendations (updated annually);~~

~~(f) Annual reassessment;~~

~~(g) Authorization for extraordinary medical expenses (if applicable);~~

~~(h) Employee tax agreement; and~~

~~(i) A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.~~

~~(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made available to the Office of Aging Services by the contract agency.~~

~~Section 16. Suspension of Services. Suspension of services shall occur for the following reasons:~~

~~(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.~~

~~(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.~~

~~(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.~~

~~(4) Participant is unwilling or unable to submit required employer taxes.~~

~~(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.~~

~~(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.~~

~~(7) Participant expires or is admitted to a long-term care facility.~~

~~(8) Participant requests suspension of services.~~

~~Section 17. Request for Fair Hearing. The applicant or participant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 910 KAR 1:140.~~

~~Section 18. Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance program shall be herein incorporated by reference.~~

~~(2) Material incorporated by reference may be inspected and copied at the Office of Aging Services, CHR Building, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.~~]

DEBORAH S. ANDERSON, Commissioner
MARK BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 15, 2007 at Noon

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone 502 564-7905, fax 502 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, February 11, 2008)

910 KAR 1:160. Program and certification requirements for the Adult Day and Alzheimer's Respite Program.

RELATES TO: KRS Chapter 13B, 194A.060(2), 194A.700(1), (2), 205.010(15), 205.201, 205.203, 205.204(1), 205.455, 205.460, [-] 205.465, 205.955, 209.030(2), (3), 216.787, 42 U.S.C. 3001 [~~et seq.~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2), 205.950

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.950 requires the Cabinet for Health and Family Services to promulgate administrative regulations [~~in accordance with KRS Chapter 13A~~] to establish health, safety, and treatment requirements for [~~a~~] certified adult day-care **centers**[~~center~~], and to establish criteria for **their**[~~the~~] certification [~~of these centers~~]. 42 U.S.C. 3001 [~~et seq.~~] **requires**[~~authorizes~~] grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) **requires**[~~authorizes~~] the cabinet [~~for Health Services~~] to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet [~~for Health Services~~] as the state agency to administer 42 U.S.C. 3001 [~~et seq.~~] in Kentucky. This administrative regulation establishes the adult day and Alzheimer's respite program. [~~The function of this administrative regulation is to set forth the standards of operation for the adult day and Alzheimer's respite program.~~]

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult day-care center" is defined by KRS 205.010(15).

(3) "Adult day center respite" means respite provided in a group setting outside the home.

(4)[~~(2)~~] "Adult day services" means a supportive and therapeutic social program of supervision and care:

(a)[~~1.~~] Provided to an eligible adult as **defined**[~~specified~~] in Section 2 of this administrative regulation; [~~and~~]

(b)[~~2.~~] During a part of the day, but for less than twenty-four (24) hours as established in KRS 205.010(15); and

(c)[~~(b)~~] For:

1. Assistance with self-administration of medication [~~medications~~];
2. Personal care services;
3. Self-care training;
4. Social activities; and
5. Recreational opportunities.

(5)[~~(2)~~] "Adult day health services" means a licensed program to provide continuous supervision of the client's [~~participant's~~] medical and health needs.

(6)[~~(3) "Adult day center" means a community based facility in which adult day supervision is provided in a group setting.~~

~~(4)~~] "Alzheimer's disease or [~~and~~] related dementing diseases" means [~~mean~~] neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(7)[~~(5)~~] "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a client [~~participant~~] with Alzheimer's disease or related dementing disease **in a client's home or in a center** to enable the caregiver temporary relief from care giving duties.

(8) "Area plan" means the plan submitted by a district for the approval of the department **that**[~~which~~] releases funds under contract for the delivery of services within the planning and service area.

(9)[~~(6)~~] "Assessment" means the collection of information and evaluation about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care may [~~can~~] be developed.

(10) "Assistance with self-administration of medication" is defined by KRS 194A.700(2).

(11)[~~(7)~~]"Case management" means:

(a) A process for ensuring that participants receive appropriate, comprehensive, and timely services to meet their needs as identified in the assessment process;

(b) Planning;

(c) Referring the participant to appropriate agencies and individuals in the informal care giving systems;

(d) Monitoring; and

(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.

(12) "District" is defined by KRS 205.455(4).

(13)[~~(8) "Center respite" means respite provided in a group setting outside the home.~~

~~(9)~~] "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(14) "In-home respite" [~~(10) "In-home respite"~~] means respite provided in the client's [~~participant's~~] home.

(15)[~~(11)~~] "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health and Family Services in accordance with 902 KAR 20:066.

(16) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(17)[~~(12)~~] "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking **and activities of daily living as defined by KRS 194A.700(1)**[~~, and pursuant to KRS 194A.700(1), eating, grooming, and toileting~~].

(18)[~~(13)~~]"Plan of care" means a written guide of action:

(a) Developed and agreed upon by the:

1. Client;

2. Primary caregiver, if applicable; and

3. [~~Participant, the primary caregiver, the director and~~] Program case manager;

(b) Based upon the participant's needs, goals, and resources; and

(c) Including appropriate services to meet identified needs and achieve objectives.

(19)[~~(14)~~] "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes **that**[~~which~~] may have occurred since the last assessment.

(20)[~~(15)~~] "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite program [~~programs~~], an individual shall:

(1) Be able to respond and share in program activities without **creating** health and safety **risks**[~~problems~~] to self or others; and

(2)[~~Meet at least one (1) of the following requirements:~~](a) Be:

1. Sixty (60) years of age or older;

2. Physically disabled or frail as a result of medical condition or age; and

3. In need of supervision or assistance during part of the day**;**[~~.~~]

(b) Be:

1. Sixty (60) years of age or older;

2. Mentally confused; and

3. In need of supervision **to prevent injury, assure proper nutrition, and assist with self-administration of medication;**[~~:~~

~~a. To prevent injury;~~

~~b. For proper assurance of~~][~~and assure proper~~][~~nutrition; and~~

~~c. For assistance with self-administration of medication~~][~~use~~][~~.~~]

(c) Be:

1. Sixty (60) years of age or older; and

2. One who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available**; or**[~~.~~]

(d) Be:

1. Any age; and

2. Have a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1)(a) Each applicant for services shall be assessed **for eligibility**[~~and certified eligible and in~~] need of services.

(b) **For each eligible applicant, a**[~~A~~] plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his abilities.

(2)(a) The client [~~The participant~~] shall be referred by the case manager for other needed services identified by the assessment.

(b) Case management shall be provided to a client [~~those participants~~] receiving multiple services but shall be provided by one (1) service provider only.

(3) The program director shall arrange **for** or **conduct**[~~provide~~] a formal reassessment at least every six (6) months.

Section 4. Fees and Contributions. (1) A case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment or case management services.

(b) The case manager shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2)(a) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate **shown in the chart in paragraph (c),** based upon income and size of family using [~~130%~~] the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services.

(b) Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

(c) The **fee**[~~copayment~~] amount shall be **calculated using a percentage rate** based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0-129%	0%	0%	0%
130%-149%	20%	0%	0%
150%-169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual, family, or other entity shall be encouraged.

(b) Suggested contribution [~~or donation~~] rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Adult day services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

(3)(a) The adult day care program funding formula shall consist of a $30,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

(b) The department may increase base funding as the need is determined contingent upon available funding.

Section 5. Termination or Reduction of Services. (1)(a) **Only a**[A] case manager or client **may**[~~shall~~] decide to terminate adult day and Alzheimer's respite services.

(b) Adult day and Alzheimer's respite services may be reduced if:

1. The client's condition or support system improves; or

2. A determination that the plan of care specified in Section 3(3)of this administrative regulation cannot be followed.

(2) If adult day and Alzheimer's respite services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a request for a hearing in accordance with Section 12 of this administrative regulation;

(b) Notify the client or caregiver of the action taken; and

(c) Assist the client and family in making a referral to another agency, if applicable.

Section 6. Service Provider Responsibilities. (1) [~~Fee for Service.~~

~~(1) The following adult day and Alzheimer's respite fee schedule shall be utilized in determining the minimum fee which shall be charged an eligible individual who has received service. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall be multiplied by the applicable percentage rate based upon income and size of family as set forth below.~~

~~Adult Day and Alzheimer's Respite Participant Income and Applicable Percentage of Fee~~		
~~Annual Income~~	~~1 Person~~	~~2 Persons~~
~~$8000 and below~~	~~0%~~	~~0%~~
~~$8001 - $10150~~	~~20%~~	~~0%~~
~~$10151 - $12300~~	~~40%~~	~~20%~~
~~$12301 - $14450~~	~~60%~~	~~40%~~
~~$14451 - $16650~~	~~80%~~	~~60%~~
~~$16651 - $18850~~	~~100%~~	~~80%~~
~~$18851 - $20950~~		~~100%~~
~~For each additional family member, add $2150.~~		

~~(2) In determining the eligible individual's ability to pay a fee, any extraordinary medical or other related expense may be taken into consideration.~~

~~(3) SSI income shall not be considered available to other family members. If an applicant is receiving SSI benefits, he shall be considered a family of one (1) for the purpose of fee determination.~~

~~Section 5. Responsibilities of the Service Provider.~~] The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the client [~~participant~~] and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe and consistent manner;

(c) **Collect the fee for service as determined by the case manager based on the sliding fee scale in Section 4 of this administrative regulation;** [~~Determine each client's fee responsibility based on the sliding fee scale identified in section 4 of this administrative regulation~~][~~Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule~~][~~;~~]

(d)1. **Use fees**[~~Collect the fee for service as determined by the case manager or assessor;~~

~~2. Fees~~] and donations[~~shall be budgeted and used~~] to increase services;

(e) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(f) Develop and maintain written personnel policies and a wage scale for each job classification;

(g) Designate a supervisor to assure that staff providing adult day services are provided supervision;

(h) Comply with applicable district administrative policies and procedures and service contracts;

(i) Provide access for staff of the district and cabinet for monitoring and evaluation purposes;

(j) Notify a case manager should the service needs of the client change due to **a change in the client's:**

1. Health;

2. Support services;

3. Family; or

4. Caregiver; **and**

(k) Develop for district approval policy and procedure:

1. For a client's referral for service to other appropriate programs and services currently provided in the district;

2. To reach a prospective client through community education and outreach activities;

3. For volunteer programs to be utilized;

4. For the periodic monitoring of a client for the appropriateness of adult day services and to assure safety and consistency;

5. For acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

6. For the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3); and

7. For the manner in which delivery of adult day services shall be provided to an eligible individual.[~~Have and use appropriate procedures for referrals to other service agencies or programs~~;

~~(f) Conduct community education and outreach activities to reach prospective participants;~~

~~(g) Comply with applicable administrative policies and procedures and service contracts; and~~

~~(h) Provide access for staff of the area development district and the cabinet for Health Services for monitoring and evaluation purposes.~~]

(2) The service provider shall establish written policies and procedures to meet the following program requirements for [~~in-center and~~] adult day center respite services:

(a) **Establish a schedule of days and hours of operation so that the program operates, at a minimum, four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;**

(b) Post the scheduled days and hours of operation in a conspicuous place and provide a written copy to the client and caregiver;[~~Establish a schedule of days and hours of operation:~~

~~1. To be posted in a conspicuous place; and~~

~~2. With~~][~~.~~][~~a written copy of the schedule [shall be] given to the client~~][~~participant~~][~~and the caregiver by program staff;~~

~~(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;~~]

(c) Supervise program activities which [~~. Supervision~~] shall be provided by staff or volunteer personnel [~~volunteers~~] meeting staff requirements as set forth in Section 9 [~~7~~] of this administrative regulation;

(d) Provide[~~:~~

~~1.~~] a balance of planned individual and group activities to meet **a client's**[~~participant's~~] needs, abilities, and interests as determined by the individual plan of care;[~~and~~]

(e) Provide an[~~2. An~~] inventory of each client's interests and personal history;

(f)[~~(e)~~] Provide a client [~~participants~~] an opportunity to plan and evaluate activities on a monthly basis;

(g)[~~(f)~~] Provide a client [~~participants~~] with a choice of activities and an opportunity to refuse to participate in the activity;

(h)[~~(g)~~] Post a monthly calendar of planned activities and available services **in a conspicuous place and retain it on site for a minimum of two (2) years for monitoring purposes;**[~~:~~

~~1. In a conspicuous place; and~~

~~2. Which shall be retained on site for:~~

~~a. Monitoring purposes; and~~

~~b. A minimum of two (2) years;~~][~~. Records shall be maintained for monitoring purposes;~~]

(i)[~~(h)~~] Provide assistance, if necessary, with activities of daily living **as defined in KRS 194A.700(1),** including:

1. Walking; **and**

2. Personal hygiene[~~; and~~

~~3. Eating, grooming and toileting pursuant to KRS 194A.700(1)~~]; [~~Eating;~~

~~3. Grooming;~~
~~4. Toileting; and~~
~~5. Personal hygiene;~~]

(j) Provide[~~(i) Comply with KRS 194A.700(2) for~~] assistance with [~~the Office of Aging Services policies and procedures for~~] self-administration of medications **as defined by KRS 194A.700(2)**;

(k)[~~(j)~~] Provide a meal that complies with 910 KAR 1:190; [~~the Office of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. A therapeutic diet shall be available in accordance with a physician's order at licensed adult day centers~~];

(l)[~~(k)~~] Allow a client [~~participants~~], as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(m)[~~(l)~~] Offer a nutrient dense snack [~~nutrient dense snacks~~], water, and other liquids at regularly scheduled times during the day;

(n)1.[~~(m)1.~~] Post a monthly calendar of menus in a conspicuous place if meals are provided; and [~~.~~]

2. Maintain menus for monitoring purposes **for a minimum of two (2) years;**

(o)[~~(n)~~] Provide first aid and make appropriate arrangements for medical care with the client's [~~participant's~~] physician or hospital for an accident or medical emergency [~~accidents or medical emergencies~~];

(p)[~~(o)~~] Notify the family or other appropriate person of any significant changes in the client's [~~participant's~~] mental or physical condition;

(q)[~~(p)~~] Refer a client to a health professional of the client's choice, as needed;

(r)[~~(q)~~] Establish linkages with another community agency **or**[~~and~~] institution to better coordinate services;

(s)[~~(r)~~] Assist a client and the client's family in identifying and accessing a community agency for:

[~~(p) Refer participants to health professionals of their choice, as needed;~~

~~(q) Establish linkages with other community agencies and institutions to better coordinate services;~~

~~(r) Assist participants and their families in identifying and accessing community agencies for:~~]

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(t)[~~(s)~~] Assist the family in arranging transportation; [~~and~~]

(u)[~~(t)~~] Notify the district immediately of a negative incident or accident involving a client, staff **member** or volunteer [~~personnel~~];

(v)[~~(u)~~] Comply with provisions of 910 KAR 1:220, Section 11, for self-administration of medications; and

(w)[~~(v)~~] Have written complaint procedures[~~to register complaints~~] that shall:

1. Include the address and phone number of the department;
2. Be posted in a conspicuous place; and
3. Be provided to each client.

(x)[~~4.~~] Provide a written report to the district **in response to a complaint** if requested.

(3) An adult day health center shall:

(a) Be monitored and licensed by the Office of the Inspector General; and

(b) Comply with licensure requirements for adult day health services in accordance with 902 KAR 20:066. [~~Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.~~

~~(3) The service provider operating a licensed adult day health center shall:~~

~~(a) Comply with licensure requirements of 902 KAR 20:066;~~

~~(b) Assure that health care needs are met;~~

~~(c) Provide self-care training;~~

~~(d) Provide personal care services; and~~

~~(e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.~~]

(4) In-home respite care service providers shall [~~comply with the following~~]:

(a) Establish with the client and caregiver a monthly schedule of days and hours of service[~~for each~~] based on the assessment, plan of care, and agreement with the **client**[~~participant~~] and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the client [~~participant~~] and program activities as determined by the assessment and plan of care for adult day services.

Section 7. District Responsibilities. A district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access [~~for adult day services~~] to records of the district pertaining to its contract for delivery of adult day services;

(2) A plan for the delivery of adult day services in the area to be served by the district including identification of services currently provided in the district;

(3) A provision for case management and assistance for adult day services;

(4) A policy and procedure for implementation of case management and assessment services;

(5) A policy and procedure for assuring a client's eligibility in accordance with Section 2 of this administrative regulation;

(6) Assurance of a number of proposed clients for adult day services to be provided **that complies with the minimum requirements for KRS 205.010(15)**;

(7) A cost unit of service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 4 of this administrative regulation;

(8) A policy and procedure for monitoring a subcontract for delivery of direct adult day services;

(9) Approval of policies and procedures of the service provider required by Section 6(1)(k) of this administrative regulation; and

(10) A policy and procedure assuring that **the assessment required by Section 3(1)(a)**[~~an assessment, as specified in Section 3(2)(a) through (c)~~] of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

(a) Demographic information, including family income;

(b) Physical health;

(c) Activities of daily living and instrumental activities of daily living;

(d) Physical environment;

(e) Mental and emotional status;

(f) Assistive devices, sensory impairment, and communication abilities;

(g) Formal and informal resources; and

(h) Summary and judgment.

Section 8. Facility Requirements. An adult day care and Alzheimer's respite program provider operating a facility for service shall:

[~~plan of care. Section 6. Facility Requirements. Adult day care and Alzheimer's respite program providers operating facilities for services shall:~~] (1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center, if offering adult day health services;

(2) Locate the adult day-care center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the adult day-care center to be readily accessible to and usable by individuals with disabilities [~~assure access and to accommodate the special needs of older persons, including individuals with handicaps~~];

(4) Provide sufficient space and arrangements of furnishings to allow for:

(a) Adequate client movement;

(b) Program activities;

(c) Food service; and

(d) Socialization;

(5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;

(6) Provide appropriate lighting, heating, cooling and ventilation for client [participant] comfort and program activities;

(7) Provide covered **leak-proof**[leak-proof] garbage disposal units for the kitchen;

(8) [(7)] Equip each adult day-care center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet **and one (1) sink** for each ten (10) clients [participants][with equal number of wash basins];

(b) Readily accessible and usable by individuals with disabilities [Easy accessibility to the handicapped];

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required; and

(d) Bathroom facilities that shall:

1.[a.] Be cleaned and sanitized daily or more often, if needed **which shall be documented**[; and

b. Documented] by a cleaning log located in the bathroom; and

2. Contain:

a. Hot and cold running water;

b. Mirror;

c. Soap;

d. Towels[and towels] or electric hand dryers; and

e. Leak-proof[d. Leak-proof] garbage disposal units **that are** emptied and cleaned daily;

(9) [Cleaned and sanitized daily; and

(e) Hot and cold running water, mirror, soap and towels;

(8)] Comply with applicable local housing and health codes;

(10) Comply with zoning requirements;

(11) [(9)] Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(12) [(10)] Maintain at least one (1) fully operational fire extinguisher with initial and annually updated inspection tags;

(13) [(11)] Maintain a fully equipped first aid kit, with unexpired contents, as recommended [defined] by the American Red Cross;

(14) [(12)] Provide identifiable space during hours of operation, for a client [participants] in need of a more private environment or rest area; and

(15)**(a)**[1.][(13)] Provide separate identifiable space during operational hours, if co-located in a facility housing other services.

(b)[2.] The following space may be shared **with other services**:

1.[a.] Dining room;

2.[b.] Kitchen; and

3.[c.] Therapy room [Certain space may be shared, like the dining room, kitchen and therapy rooms].

Section 9. [7.] Program Staff. (1) Staffing requirements for a certified adult day-care center [in-center programs] shall include:

(a) Trained and experienced staff **who**[that] shall be present each day of operation;

(b) At least two (2) staff members at the adult day-care center at times when there is more than one (1) client in attendance, one (1) of whom shall be a paid staff member;

(c) Staffing ratios that shall be:

1. One (1) staff member if one (1) client is in attendance;

2. Two (2) staff members if two (2) clients are in attendance;

3. Three (3) staff members if **three (3) to** eleven (11) clients are in attendance; and

4. One (1) staff member for each five (5) additional clients over eleven (11);

(d) Except for a director, volunteer personnel may be included in the staff ratio, if volunteer personnel **meet the**[meets] staff qualifications and training requirements of this administrative regulation;[and]

(e) At least one (1) staff member who has completed cardiopulmonary resuscitation certification by the American Heart Association or American Red Cross present when clients are in attendance; **and**[.]

(f) A criminal records check that shall be obtained on a potential employee prior to the employee's date of hire in accordance with KRS 216.787.

[(b) Staffing ratios that shall be one (1) staff for each five (5) participants;

(c) There shall be at least two (2) responsible persons at the center at times when there are more than one (1) participant in attendance; one of whom shall be a paid staff member;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(e) At least one (1) staff member who has completed first training shall be present at times that participants are in attendance.]

(2) Staff qualifications for programs shall be as follows:

(a)**1.** A director of an adult day-care center [Directors of centers] shall **be**[meet one (1) of the following requirements]:

a.[1.] A trained social worker possessing:

(i)[a.] A minimum of a bachelor's degree in social work or a related field relevant to geriatrics and [; and

b.] two (2) years professional experience in working with the elderly; or

(ii)[b.][c.] A master's degree in social work or a related field relevant to geriatrics and [; and

d.] six (6) months professional experience working directly with the elderly; [or]

b.[2.] A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly while an employee of a:

(i)[a.] Home health agency;

(ii)[b.] Long-term care facility;

(iii)[c.] Public health agency; or

(iv)[d.] Social service agency; **or**

c.[3.] An individual at least twenty-one (21) years of age with:

(i)[a.] A high school diploma or GED certificate; and

(ii)[b.] A minimum of two (2) years of college, or equivalent training with at least two (2) years of professional experience in working directly with the elderly.[; or][Two years professional education in social services, health or geriatrics; and

c. Two years professional education in working directly with the elderly;]

2.[4.] Professional experience that **includes working directly with the elderly while an employee of a public or private health or social service agency may substitute for professional education on a year-for-year basis.**[shall:

a.][shall][Substitute for professional education on a year-for-year basis; and

b.][, and shall][Include working directly with the elderly while an employee of a public or private health or social service agency.]

(b) A case manager for adult day services shall meet the same qualification requirements specified in **paragraph**[subsection] (d) of this **subsection**[section].

(c) Administrators of licensed adult day health programs shall meet **the** requirements **of** [as governed by] 902 KAR 20:066[, Operations and services, day health care programs].

(d) [(c)] Staff responsible for assessments or case management for participants shall[meet one (1) of the following]:

1. **Have a**[A] bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;

2. **Have a**[A] bachelor's or master's degree in nursing with a current Kentucky nursing license, no experience required;

3. **Have a**[A] bachelor's degree with two (2) years **of paid or volunteer** experience in working with the elderly;[or]

4. **Be a**[A] Kentucky registered nurse with a current Kentucky license and two (2) years **of** experience **working with the elderly;** or

5. Be a licensed practical nurse with a current Kentucky license and three (3) years **of paid or volunteer** experience working with the elderly.[; and

5. Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.]

(3)(a) Tuberculosis testing shall be conducted and testing records maintained in accordance with 902 KAR 20:200, Section 7.

[(e)1. Staff or volunteer personnel][(d) Employees and volunteers] [with ongoing client contact shall submit evidence of tuberculosis testing, which shall be maintained in the personnel file, as governed by 902 KAR 20:200][:

1.][within one (1) year prior to employment][;][or]

[2.][during the first week of employment].

(b)[2.] An annual screening shall be required[thereafter].

(4)[(f)] Staff or volunteer personnel **who contract** [and 3. Annually thereafter.

(e) An employee or volunteer][contracting] an infectious disease **listed in**[pursuant to] 902 KAR 2:020 shall **not appear at work until:**

(a) The[1. Not appear at work until the] infectious disease can no longer be transmitted; and

(b) He or she provides[2. Provide] a physician's statement **authorizing a**[for] return to work.

(5)[(g)] [(f)] In-home respite staff shall meet the [above] requirements of paragraphs (a) through (f) of this subsection and shall:

(a)[1.] Be twenty-one (21) years of age if working independently; or

(b)[2.] If working as a team to provide direct services, have one (1) member [shall be] at least twenty-one (21) years of age and the other staff member **of** [shall be] at least eighteen (18) years of age.

(6)[(3)] Training of staff shall be provided by **a professional familiar with the subject matter** [an appropriate qualified professional] [professionals] as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive a minimum of six (6) hours of orientation to the program and adult day-care center including:

1. Program objectives;
2. Program policies and procedures;
3. Health, sanitation, emergency, and safety codes and procedures;
4. Client confidentiality; [and]
5. Personnel policies and procedures; and
6. Policies and procedures that shall be explained verbally and provided in writing;

(b) Within one (1) month of employment all staff shall be trained and certified in cardiopulmonary resuscitation;

(c) Within three (3) months of employment, staff [personnel] shall be provided a minimum of thirty-four (34) hours of basic training that includes:

1. The aging process;
2. Interpersonal communications;
3. Personal care services;
4. First aid;
5. Identifying and reporting health problems; [and]
6. Stress management;
7. Recognizing and reporting suspected adult abuse, neglect, or exploitation consistent with KRS 209.030(2) and (3);
8. Universal blood and body fluid precautions;
9. Dementia;
10. Causes and manifestations of dementia;
11. Managing a client with dementia;
12. Crisis intervention with a combative client; and
13. Effects of dementia on the caregiver.

[(c) In addition to basic training, Alzheimer's respite personnel shall be provided training in:

1. Dementia;
2. Causes and manifestations of dementia;
3. Managing the participant with dementia;
4. Crisis intervention with combative participants; and
5. Effects of dementia on the caregiver.]

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. Orientation within two (2) weeks of employment; and
2. Basic training within three (3) months of employment.

Section 10. Client Records. (1)(a) A client record shall [: Section 8. Participant Records.

(1)(a) Records shall] be typed or legibly written in ink with each entry dated and signed by the recorder and [shall] **including**[include] the recorder's title.

(b) Each client [participant] record shall be maintained at the program site and [shall] contain:

1. A completed assessment;
2. Client notification by letter **of eligibility, fees assessed, and the center's days and hours of operation;**
3. A weekly summary of any changes in the client's:
a. Objectives and goals;
b. Progress;
c. Physical and mental conditions;
d. Behaviors;
e. Responses;
f. Attitudes;
g. Appetite; or
h. Other changes or observations noted by program staff and case manager;
4. Emergency contact information including responsible party and personal physician;
5. Attendance record;
6. Record of services provided by in-home or other program services;
7. Signed authorization for client to receive emergency medical care, if necessary;
8. Ongoing reassessment and plan of care;
9. Signed and dated in medical summary and care plan, if referred on orders of a physician;
10. Correspondence; and
11. Closing summary. [(a) Signed and dated in medical summary and care plan, if referred on orders of a physician;
(b) A completed assessment;
(c) Signed eligibility statements;
(d) Application for services;
(e) Client notification;
(f) Fee assessment;
(g) An individualized plan of care including specific activities and objectives and signed DSS 1253, Quality Assurance Agreement, as incorporated by reference into 910 KAR 1:180, prepared by the center director and case manager with the input and agreement of the participant and primary caregiver;
(h) An ongoing record, indicating any changes in the participant's:
1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or
8. Other changes or observations noted by program staff and case manager;
(i) Emergency contact information including responsible party and personal physician;
(j) Attendance record;
(k) Record of services provided by in-home or other program services;
(l) Signed authorization for participant to receive emergency medical care, if necessary;
(m) Ongoing reassessments and care plans;
(n) Correspondence; and
(o) Closing summary.]

(2) Licensed day care centers shall maintain records as **required**[governed] by 902 KAR 20:066.

(3) The service provider shall comply with reporting requirements of the district and the cabinet.

(4) Confidentiality of records and reports shall be in accordance with KRS 194A.060(2).

Section 11. Certification of Adult Day-Care Centers. (1) An adult day-care center shall be certified by the cabinet.

(2) An authorized representative of the department shall have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of a complaint.

(3) Application for certification shall be made by filing a DAIL-ADC-900, Application for Adult Day-Care Center Certification with

the Cabinet for Health and Family Services, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) Renewal of certification shall be made biennially.

(b) A renewal application shall be submitted **sixty (60) days** prior to the expiration date of the current certification.

(5)(a) Compliance with the health, safety, and treatment standards established in this administrative regulation shall be documented on a DAIL-ADC-901, **Adult Day-Care** Certification Check List.

(b) Documented compliance shall be confirmed by **an**[~~:~~

~~1. An~~] unannounced inspection pursuant to KRS 205.955 **conducted by the** [~~; and~~

~~2. The~~] department.

(6)(a) Regulatory violations identified during an inspection shall be transmitted in writing to the adult day-care center within **fifteen (15)** [~~ten (10)~~] business days of the inspection.

(b) The adult day-care center shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within fifteen (15) business days of receiving the department's **statement of noncompliance**[~~plan for compliance~~].

1. The plan shall specify the dates by which each of the violations shall be corrected.

2. The department shall review the plan and within fifteen (15) days of receipt of the plan for compliance:

a. Notify the adult day-care enter whether the plan is acceptable or not, in writing;

b. If acceptable, issue a certificate certifying the adult day-care center for a two (2) year period;

c. If unacceptable, specify the reasons.

3. If the department notifies the adult day-care center that the plan is unacceptable, the center shall amend the plan for compliance and resubmit it within fifteen (15) days.[~~Following a review of the plan, the adult day-care center shall:~~

~~a. Be notified in writing of the acceptability of the plan within fifteen (15) business days of receipt of the plan for compliance; and~~

~~b. Receive a certificate certifying the adult day-care center for a two (2) year period.~~

~~3.a. If the plan is unacceptable, the reasons shall be specified.~~

~~b. The adult day-care center shall modify or amend the plan for compliance and resubmit within fifteen (15) business days.~~

~~c. If the plan for compliance is satisfactory, the adult day-care center shall be notified as specified in subparagraph 2 of this paragraph.~~]

(7) If the department determines after reviewing the amended plan of compliance that certification shall be denied, the department shall, **within ten (10) business days of the determination:**

(a) Notify the adult day-care center of the determination;

(b) Notify the adult day-care center of the opportunity for an informal dispute resolution meeting between the department and a representative of the adult day-care center to be held within fifteen (15) days of the adult day-care center's receipt of the notice;

(c) Provide the center with any supporting documentation or materials regarding an issue of noncompliance; and

(d) Notify the adult day-care center of its appeal rights in accordance with Section 12 of this administrative regulation. [~~notify the adult day-care center within ten (10) business days of the determination and with the:~~

~~(a) Opportunity to an informal dispute resolution meeting:~~

~~1. Between the:~~

~~a. Department; and~~

~~b. A representative of the adult day-care center;~~

~~2. To be held within fifteen (15) days of the adult day-care center's receipt of the notice; and~~

~~3. To address an issue of noncompliance in question, including the provision of additional documentation or support materials; and~~

~~(b) Appeal rights as specified in Section 12 of this administrative regulation if:~~

~~1. An informal dispute is not requested; or~~

~~2. A dispute is not resolved with the informal dispute resolution.~~

~~(8)(a) The commissioner of the department may deny or revoke certification if the health, safety, or security of a client is in danger or for failure to meet the standards of this administrative regulation after the expiration of a period not to exceed sixty (60) days from the date of the first official notice that standards have not been met.~~

~~(b) If certification is revoked, the applicant shall not reapply for at least one (1) year from the designated date of closure established by the cabinet.~~]

Section 12. Appeal Procedures. (1) If certification of an adult day-care center has been denied or revoked, the applicant shall be notified in writing of the right to appeal. **The department shall send the notice by certified mail within ten (10) days of the determination.**[~~:~~

~~(a) Within ten (10) days of determination; and~~

~~(b) By certified mail.~~]

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days, pursuant to KRS 205.950, after receipt of the notice.

(3) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(4)[~~(5)~~](a) If the denial or revocation is upheld by the secretary, the commissioner of the department or representative shall specify the date by which the adult day-care center shall close.

(b) The center shall be notified in writing.

(5)[~~(6)~~] An adult day-care center may appeal a final decision to the circuit court within thirty (30) days of the decision.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ADC-900, Application for Adult Day-Care Center Certification", edition 3/08; and

(b) "DAIL-ADC-901, Adult Day-Care Certification Checklist", edition 3/08.

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

DEBORAH S. ANDERSON, Commissioner
TOM EMBERTON, JR., Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Support
(As Amended at ARRS, February 11, 2008)

921 KAR 1:380. Child Support Program application and interstate process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 405.430(5), 405.520, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 302.30, 302.31, **303.69,** 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Program (CSP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires access to the child support application process to be provided to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

Section 1. Child Support Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights[~~, pursuant to 921 KAR 3:030,~~] to the state for support that the applicant or recipient may have from any other person in accordance with[:

~~a.~~] KRS 205.720(1)[~~;~~] and

[~~b.~~] 921 KAR 2:006.

2. The assignment shall:

a.[~~1.~~] Include members of the case for whom support rights apply; and

b.[~~2.~~] Be completed **when applying**[~~at the time of application~~] for K-TAP or Kinship Care benefits using the application form **incorporated by reference**[~~specified~~] in 921 KAR 3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been [~~be~~] established; and

b. An assigned support obligation;

5.[~~6.~~] Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6.[~~7.~~] Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSP;

2. Review and approve a foster care child support referral[~~, using the "DCBS-1260, Title IV-E and Child Support Referral"~~];

3. [~~Forward the DCBS-1260 to the appropriate child support staff;~~

~~4.~~] Complete a change of status if a change occurs that relates to the [~~child's~~] child support process; and

4.[~~5.~~] Forward to the CSP a copy of the child support court documents [~~pertaining to the child's child support process~~].

(c)1. If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet **shall**:

a. **Determine that good cause exists**[~~May determine good cause~~] in accordance with Section 2(3) of this administrative regulation; or

b. **Establish**[~~Shall establish~~] a child support obligation pursuant to subparagraph 2 of this paragraph.

2. The cabinet shall [~~may~~] pursue the establishment of a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made [~~pursuant to 921 KAR 3:030~~], the CSP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor; and

6. Name and address of the noncustodial parent or obligor's place of employment.

(b) An application for Medicaid shall include an assignment of rights for medical support**, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference**[~~:~~

~~1. Pursuant to 907 KAR 1:011; and~~

~~2. Which shall be completed by using the application form specified~~] in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSP the [~~"~~]CS-140, Assignment of Rights and Authorization to Collect Support[~~"~~].

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1.**a.** Upon the request of a nonpublic assistance applicant, the CSP shall give an application packet to the applicant.

b. If the request is:

(i)[~~a.~~] Made in person, the packet shall be provided the same day; or

(ii)[~~b.~~] Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

2. The application packet shall include the:

a. [~~"~~]CS-33, Non-K-TAP Application[~~"~~];

b. [~~"~~]CS-168, Application for Direct Deposit[~~"~~]; and

c. [~~"~~]CS-11, Authorization and Acknowledgement of No Legal Representation[~~"~~].

3. In order to receive child support services, the applicant shall complete and return the:

a. CS-33**, Non-K-Tap Application**; and

b. CS-11**, Authorization and Acknowledgement of No Legal Representation**.

(d) Except for a putative father and location-only case, services provided to a nonpublic assistance client through the CSP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(b) and (c) of this administrative regulation.

(f) The CSP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and social security number of the child;

2. Name of the custodial and noncustodial parent[~~,~~] or obligor;

3. Social Security number of the custodial and noncustodial parent[~~,~~] or obligor;

4. Date of birth of the custodial and noncustodial parent[~~,~~] or obligor;

5. Home address or last known address of the custodial and noncustodial parent[~~,~~] or obligor; and

6. Name and address of the custodial and noncustodial parent's or obligor's[~~,~~]employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent[~~,~~] or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation;

(e) Enforcement of a:

1. Child support or medical support obligation; and

2. Spousal support obligation if the:

a. Client is the spouse or ex-spouse;

b. Child lives with the spouse or ex-spouse; and

c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation; and

(h) For a Medicaid-only case type, application for health insurance coverage through an employer for the child if court or administratively ordered but not provided by either parent.

(2) The CSP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

(a) [~~A~~] referral from the public assistance agency;

(b) Foster care referral[~~, DCBS-1260~~]; or

(c) [~~A~~] nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to **921 KAR 2:006 or**[~~:~~

~~a. 921 KAR 2:006; or~~

~~b.~~] 922 KAR 1:530.

(b) If the CSP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006**, Section 24**, location shall be attempted for a:

(a) Public assistance case referred to the CSP; or

(b) Nonpublic assistance case for which child support services are being provided.

(2) The CSP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's[~~,~~] or obligor's[~~,~~] sources of income, assets, property**,** and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSP pursuant to **KRS 205.712 and 205.730(5)**[~~:~~

~~(a) KRS 205.712 and 205.730(5); and~~

~~(b)~~] 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

[~~(5) In accordance with 45 C.F.R. 303.70(e), the CSP shall charge a one (1) dollar application fee for a:~~

~~(a) Nonpublic assistance case in which location is the only service requested; or~~

~~(b) Parental kidnapping request, but absorb the cost of the application fee.~~]

Section 4. Interstate Process for Child Support Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.70, the CSP shall:

(1) Extend to an interstate child support case the same services available to an intrastate case; and

(2) Provide an agency in a responding state **with** sufficient and accurate information and documentation on the appropriate interstate transmittal forms, the:

(a) [~~"~~]CS-98, General Testimony[~~"~~];

(b) [~~"~~]CS-99, Affidavit in Support of Establishing Paternity[~~"~~]; and

(c) [~~"~~]CS-100, Uniform Support Petition[~~"~~].

Section 5. Public Awareness. The **effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSP's services and encourage their use**[~~CSP shall publicize the availability of its services and encourage their use pursuant to KRS 205.712(2)(g). This effort~~] may include:

(1) Public service announcements;

(2) Posters;

(3) Press releases;

(4) Videos;

(5) Annual reports;

(6) Newsletters;

(7) Mail inserts;

(8) Pamphlets; and

(9) Letters.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 3/08 [~~10/06~~];

(b) "CS-33, Non-KTAP Application", edition 3/08 [~~10/06~~];

(c) "CS-98, General Testimony", edition 10/06;

(d) "CS-99, Affidavit in Support of Establishing Paternity", edition 10/06;

(e) "CS-100, Uniform Support Petition", edition 10/06;

(f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 10/06; and

(g) "CS-168, Application for Direct Deposit", edition 3/08 [~~10/06; and~~

~~(h) "DCBS-1260, Title IV-E and Child Support Referral", edition 10/06~~].

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Acting Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 13, 2007 at 4 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Support
(As Amended at ARRS, February 11, 2008)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS [~~13B.010(2),~~] 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, [~~405.450,~~] 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 303.4, 303.8, 303.31, 42 U.S.C. 651-669b

STATUTORY AUTHORITY: KRS [~~13B.170,~~] 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B.~~] KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Program in accordance with federal law

and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation shall be Established. (1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount:

(a) Specified in Section 2(4) of this administrative regulation; or

(b) Administratively established by the cabinet in accordance with the child support guidelines contained in KRS 403.212, as computed on form:

1. [~~Form, "~~]CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation["]; or

2. [~~Form, "~~]CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception["].

(3) The amount determined shall be **the amount to be collected** [~~for collection purposes~~]. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statute and legal process in establishing the amount of a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions[~~as~~] specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g)3, shall be calculated by using [~~determined by applying~~]:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained; or

(b) One-hundred (100) percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained.[~~; or~~

~~(b) That parent's portion of the total support obligation as indicated on the worksheet, if:~~

~~1. There is a support order; and~~

~~2. A copy of the child support obligation worksheet can be obtained.~~]

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

(b) Establish a child support or medical support obligation; or

(c) Send a copy of **any**[~~a~~] legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212, or subsection (4) of this section.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the custodial parent, forms:

1. ["]CS-133, Custodial Parent Information Request["];

2. ["]CS-65, Statement of Income and Resources["];

3. ["]CS-132, Child Care Expense Verification["]; and

4. ["]CS-136, Health Insurance Information Request["].

(b) Send to the nonparental custodian, forms:

1. ["]CS-131, Nonparental Custodian Information Request["];

2. CS-132; and

3. CS-136, [~~"Health Insurance Information Request",~~] if appropriate;

(c) Send to the noncustodial parent, or obligor, forms:

1. ["]CS-64, Noncustodial Parent Appointment Letter["];

2. CS-65;

3. CS-132; and

4. CS-136;

(d) Send a ["]CS-130, Wage Information Request["] to the employer of the:

1. Custodial parent[~~, or nonparental custodian~~]; or

2. Noncustodial parent, or obligor;

(e) **Issue a CS-84 Administrative subpoena, if appropriate:**

1. In accordance with KRS 205.712(2)(k) and (n);

2. On a custodial parent;

3. On a nonparental custodian;

4. On a noncustodial parent, or obligor; or

5. On an employer; and[~~Issue a subpoena, if appropriate, as specified in KRS 205.712(2)(k), (l), (n), by submitting a~~] [~~"~~][~~CS-84, Administrative Subpoena~~][~~" to~~]:

1. A utility and cable company;

2. A financial institution;

3. A custodial parent;

4. A nonparental custodian;

5. A noncustodial parent, or obligor; or

6. An employer; and

(f) Prior to initiating a request for information from a certified consumer credit reporting agency[~~as specified in KRS 205.7685~~], send an obligor a [~~if appropriate. An obligor may contest a mistake of fact up to ten (10) days after receiving a~~"] CS-93, Advance Notice of Intent to Request Full Credit Report **in accordance with KRS 205.7685**["].

(4) In a default case, the cabinet shall set the obligation based on the Kentucky Transitional Assistance Program (K-TAP)[~~K-TAP~~] standard of need for a child as specified in **921 KAR 2:016, Section 9**[~~921 KAR 2:006, Section 8~~][~~(2)(a)~~].

(5) After the monthly support obligation is determined, the cabinet shall:

(a) Serve a ["]CS-66, Administrative Order/Notice of Monthly Support Obligation["] and a ["]CS-80, Rights and Responsibilities of Noncustodial Parents["], upon the noncustodial parent, or obligor, **in accordance with the requirements of**[~~as specified in~~] KRS 405.440; [~~and~~]

(b) Provide the legal representative of the noncustodial parent, or obligor, [~~another concerned party~~] with a copy of the notice within fourteen (14) calendar days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice; and

(c) Send a CS-66 to the custodial parent, concurrent with issuing the CS-66 to the noncustodial parent or obligor.

(6) In accordance with KRS 405.430(6), a[~~the~~] cabinet may modify the monthly support obligation established by the cabinet.

(7) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (8) of this section.

(8) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction[~~If support rights are assigned to the cabinet, the cabinet may upon notice to the obligor and obligee, administratively modify an order established by a court of competent jurisdiction to direct the obligor or other payor to change the payee to the appropriate entity~~].

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet shall notify each party subject to a child support order of

the right to request a review of the order every thirty-six (36) months.

(2) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) 1. Modify the order;

2. Request modification of the order; or

3. Determine the circumstances do not meet criteria for modification, in accordance with KRS 403.213, and issue a CS-79, Notification of Review Determination, as specified in paragraph (c) of this subsection; and

(c) Provide notification within fourteen (14) calendar days to each parent or custodian, if appropriate, and legal representatives.

(3) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review and, in accordance with subsection (4) of this section, modify a child support order:

(a) Upon the request of:

1. Either parent; or

2. Another party with standing to request a modification; and

(b) Every thirty-six (36) months in a K-TAP case in which the address of each parent or custodian is known.

(4) If a child support case meets the criteria of KRS 403.213, the cabinet shall:

(a) Modify an administratively established order; or

(b) Request a court of competent jurisdiction to modify a judicially-established order.

(5) **In accordance with subsections (3) and (4) of this section, the** [~~The~~] cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child.

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. [~~The cabinet shall have a written and publicly available review and adjustment plan for a child support order.~~

~~(2) The cabinet may review and adjust an administratively established child support obligation or review and request an adjustment to a judicially-established child support obligation:~~

~~(a) Upon the request of the cabinet in a public assistance case; or~~

~~(b) Upon the request of either parent.~~]

~~(3) Retroactive modification of a child support order shall not occur unless:~~

~~(a) Within two (2) years of the establishment of the order, evidence of gross income, as defined in the child support guidelines established under KRS 403.212, results in a higher amount of child support; or~~

~~(b) There is a pending petition for modification that is effective from the date that notice of the petition is provided to the obligor and oblige.~~

~~(4) A public assistance or nonpublic assistance case shall be reviewed administratively or judicially at the request of either parent, nonparental custodian, or another person or entity that may have standing to request a modification subject to the child support order.~~

~~(5) Every thirty-six (36) months, the cabinet shall notify each parent subject to an order of the right to request a review.~~

~~(6) Within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:~~

~~(a) Conduct the review;~~

~~(b) Modify or request modification of the order, or determine that there will be no change and notify the noncustodial parent, or obligor, and another concerned party.~~

~~Section 4. Appeal Procedures. (1) A parent, or another person or entity that has standing, or an authorized representative may request and be granted relief by an administrative hearing in accordance with KRS Chapter 13B.~~

~~(2) A request shall be made to the cabinet:~~

~~(a) in writing;~~

~~(b) In person; or~~

~~(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.~~

~~(3) The written request for an administrative hearing shall be considered timely if made:~~

~~(a) Within twenty (20) days of receipt of an initial notice of monthly support obligation;~~

~~(b) Within twenty (20) days after the parent is notified that the initial support obligation will be upheld;~~

~~(c) Within twenty (20) days of receipt of a notice of lien;~~

~~(d) Within thirty (30) days of receipt of a modified notice of monthly support obligation; or~~

~~(e) After thirty (30) days but before fifty (50) days have passed since the parent requested an administrative hearing, and the cabinet has not acted upon the request.~~

~~(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. A good cause reason shall include a:~~

~~(a) Parent being away from home during the entire filing period;~~

~~(b) Parent's inability to read the notice of monthly support obligation; or~~

~~(c) Parent's incapacity due to a serious illness during the entire filing period.~~

~~(5) A parent or another person or entity having standing to request modification, or an authorized representative may:~~

~~(a) Review case material pertinent to the reason for the dispute; and~~

~~(b) Present a witness at the hearing.~~

~~(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).~~

~~(7) If the objection is being filed on a proposed modification of an existing administratively established obligation, or a decision that the existing obligation should not be changed, the amount of the existing obligation shall be enforceable and that amount shall be paid by an obligor while the hearing is pending;~~

~~(a) If a parent or another person or entity having standing to request a modification, or an authorized representative, prevails, the cabinet shall promptly return to the obligor an overpayment made since the hearing was requested.~~

~~(b) If the cabinet prevails, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation.~~

~~(8) A parent or another person or entity having standing to request a modification, or an authorized representative, may withdraw the hearing request by writing to the Child Support Office or the Administrative Hearings Branch in the cabinet.~~

~~(9) If a parent or another person or entity having standing to request modification, or an authorized representative, fails to appear at the hearing, the Administrative Hearings Branch may allow the parent to reschedule the hearing.~~

~~(a) The parent or another person or entity having standing to request modification, or an authorized representative, shall receive notification by mail that good cause for failing to appear shall be provided within ten (10) days to the Administrative Hearing Officer in the cabinet, or the action shall be dismissed.~~

~~(b) If the parent or another person or entity having standing to request modification, or an authorized representative, does not reschedule or show good cause, the hearing officer shall dismiss the action.~~]

~~Section 5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-64, Noncustodial Parent Appointment Letter", edition 10/06;

(b) "CS-65, Statement of Income and Resources", edition 10/06;

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 03/08[~~10/06~~];

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 10/06;

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 10/06;

(f) "CS-79, Notification of Review Determination", edition 3/08

(g) "CS-80, Rights and Responsibilities of Noncustodial Parents", edition 10/06;

(h)[(g)] "CS-84, Administrative Subpoena", edition 03/08[10/06];

(i)[(h)] "CS-93, Advance Notice of Intent to Request Full Credit Report", edition 10/06;

(j)[(i)] "CS-130, Wage Information Request", edition 10/06;

(k)[(j)] "CS-131, Nonparental Custodian Information Request", edition 10/06;

(l)[(k)] "CS-132, Child Care Expense Verification", edition 3/08[10/06];

(m)[[(l)] "CS-133, Custodial Parent Information Request", edition 10/06; and

(n)[(m)] "CS-136, Health Insurance Information Request", edition 3/08 [10/06].

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON JR., Acting Secretary
APPROVED BY AGENCY: December 10, 2007
FILED WITH LRC: December 12, 2007 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone: (502) 564-7905, fax: (502)-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Support
(As Amended at ARRS, February 11, 2008)

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), [13B.170,] 67A.620, 95.620(1), 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 237.110(4), 403.215, 405.060(2), (3), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 C.F.R. 302.60, 302.65, 303.6, 303.32, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), Pub.L. 109-171

STATUTORY AUTHORITY: KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 654, 659, 666[(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), (c)(1)(G)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support [payments, including means of enforcement and management of disputes and appeals].

Section 1. Collection. (1) Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by 921 KAR 1:001, Section 1(3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:

(a) Fifteen (15) calendar days of a request for income withholding **by sending the employer or other income source**[with a]:

1. "CS-89, **Income Withholding for Support**[Order/Notice to Withhold Income for Child Support]"; and

2. "CS-72, National Medical Support Notice"; or

(b) Two (2) working days after entry of an obligor into the State Directory of New Hires [for health insurance with the notice specified in paragraph (a)2 of this subsection].

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date **of** the CS-89[is mailed]; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) In accordance with KRS 405.467(4), the cabinet shall send an obligor a CS-164, Notice of Income Withholding, and the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430; and

(b) Shall apply to the current and any subsequent employer. [The cabinet shall notify the obligor within fifteen (15) calendar days, in accordance with KRS 405.467(4), of a request for income withholding for an assigned support obligation or health insurance coverage with a CS-89, and "CS-164, Notice of Income Withholding" that:

(a) An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and

(b) If the obligor does not contest income withholding for an assigned support obligation or ordered health insurance coverage, as specified in paragraph (a) of this subsection, the income withholding shall apply to the current and any subsequent employer.]

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the.

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) An obligor shall inform the cabinet of any changes in:

1. A current employer or source of income; and

2. Access to health insurance.

(8) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

(a) An assigned support obligation payment to the state disbursement unit in the child support agency; or

(b) A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) The employer or other income source:

(a) Shall include on the transmittal to the cabinet the obligor's:

1. Name;

2. Social Security number; and

3. Cabinet-assigned identification[case] number; and

(b)1. Shall not be required to change payroll frequency but shall withhold at least once monthly; or

2. May combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by:

a. Name;

b. Social Security number; and

c. Cabinet-assigned identification number.

(12) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the Education Cabinet, Office of Employment and Training, shall fax a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) The cabinet shall provide a ["]CS-73, Unemployment Insurance Letter["], and ["]CS-76, Unemployment Insurance Notice of Withholding["] to notify an obligor[an obligor notifying] that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76 to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~].

Section 2. Enforcement. (1) Federal income tax refund offset and administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least $150 [~~delinquent~~]; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

3. Nonpublic assistance arrearage owed is equal to or greater than $500, exclusive of fees, court costs, or other non-child support debt; and

4. Cabinet has a copy of the:

a. Current support order; and

b. Payment record

(c)1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 45 C.F.R. 303.7.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(2) State income tax refund offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if:

1. There is an arrearage on a legally-assigned support obligation;

2. The obligor's name and Social Security number are known;

3. The arrearage is verified as accurate; and

4. The amount of the arrearage is at least $150.

(b) A nonpublic assistance support arrearage shall qualify for offset if the:

1. Case meets the criteria specified in subsection (1)(b)1, 2, and 4 of this section; and

2. Required arrearage amount is not less than $150.

(3) Tort claim settlements and administrative offset. The cabinet shall:

(a) Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)(a) or (b) of this section;

(b) Send by mail form [“]CS-122, Advance Notice of Intent to Collect Past-Due Support,[”] to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~]; and

(c) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1. The obligor owes an arrearage equal to at least six (6) months obligation or $1,000, whichever is less; and

2. The obligor is not complying with the most recent assigned support order;

(b) Issue a "CS-68, Order to Withhold", and "CS-69, Answer to Withhold", to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and [“]CS-121, Noncustodial Parent's Answer to Withhold,[”] to the obligor by certified mail within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. **After notifying**[~~Notifying~~] the obligor that the funds in the account with the financial institution may be retained by contesting the order to withhold and requesting an administrative hearing in accordance with 921 KAR 1:430 [~~to retain an account with a financial institution an order to withhold may be contested by requesting an administrative hearing as specified in Section 4 of this administrative regulation~~];

(d) Refer the case for parent-locator service, if a CS-68 is returned and the forwarding address for the obligor is unknown;

(e) Send to the financial institution a "CS-83, Order to Deliver" if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (g) of this subsection;

(f) Send within twenty (20) calendar days of an administrative hearing decision, a:

1. CS-83 to the financial institution, if a case qualifies for the withhold and deliver process; or

2. "CS-70, Release of Order to Withhold" to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor **that** to retain the funds in the account with the[~~that to retain an account with a~~] financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar [~~working~~] days from the date of receipt of a CS-68

1. Pay the total arrearage;

2. Post a bond for the total arrearage; or

3. Sign a [“]CS-78, Payment Agreement,[”] to pay within fifteen (15) calendar days:

a. Current support;

b. A $1000 lump sum payment which may be negotiated if the amount:

(i) Places an unjust burden on the obligor; or

(ii) Prevents the obligor from obtaining or retaining employment;

c. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and

d. An arrearage payment for subsequent months as determined by one (1) of the following:

(i) An amount established by a court order;

(ii) If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or

(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17)[~~Financial Institution Data Match~~], the cabinet shall **comply with KRS 205.712, 407.5305, and 407.5507**[~~use the Administrative Enforcement of Interstate Cases process~~] to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a "CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) To the financial institution a:

1. CS-83 if there is no dispute; or

2. CS-70 if the initiating state's request is withdrawn.

(6) Lump sum payment.

(a)**1. Written notice provided by an employer as required by KRS 405.465(6) shall be sent to the Department for Community Based Services, Division of Child Support, and shall include the:**[~~In accordance with KRS 405.465(6), an employer shall provide written notification to the Department for Community Based Services, Division of Child Support, of any lump sum pay-~~

~~ment that is not already subject to the employee's assigned support obligation and wage withholdings. The written notification:~~

~~1. Shall include the:~~]

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date; and

2. The notice may[~~May~~] include multiple employees on one (1) written notification if information in accordance with subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification, pursuant to paragraph (a)[~~(1)~~] of this subsection, the Division of Child Support shall determine if the:

1. Employee owes an arrearage on an assigned support obligation; and

2. Requirements of KRS 405.465(1) are met.

(c) If the employee owes no arrearage, the Division of Child Support or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to subparagraph (b) of the subsection, the Division of Child Support or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If the Division of Child Support or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from the Division of Child Support or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

Section 3. Administrative Enforcement Actions. (1)**(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:**

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;

2. The obligor's account has been audited and the arrearage confirmed;

3. The property has been identified and located; and

4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall issue a:

1.a.[~~If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet may:~~

~~(a) File a lien on the obligor's interest in personal or real property by issuing:~~

~~a.~~] ["]CS-92, Intrastate Notice of Lien,["] for property within Kentucky, in accordance with KRS 205.745; or

b. ["]CS-85, Notice of Lien,["] for property outside Kentucky in accordance with KRS 205.7785; and

2. Provide a ["]CS-119, Noncustodial Parent's Notice of Lien,["] to the obligor notifying that:

a. The obligor may contest the lien as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~];

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a ["]CS-120, Release of Lien["], shall be provided to the obligor;

(b)1. If the conditions for filing a lien pursuant to paragraph (a) of this subsection are not met, the cabinet shall:[~~(b) 1.~~] Provide a CS-122 to the obligor notifying that:

a. Past-due amounts shall be reported to a certified consumer reporting agency; and

b The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~];

2 Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.768, if:

a. The advance notice is returned as undeliverable; and

b. Subsequent location efforts are unsuccessful; and

3. Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice.

(2) If an obligor owes an arrearage equal to or greater than six (6) **months**[~~month's~~] of an assigned support obligation, as established in KRS 205.712(9) and (10), the cabinet shall:

(a) Determine if an obligor holds and, if so, take action against one (1) or more of the following:

1. Professional license or certificate;

2. Occupational license or certificate;

3. Recreational license;

4. Sporting license; or

5. Driver's license, for arrearages that have accrued since January 1, 1994;

(b) Send to the obligor, by certified mail:

1. A ["]CS-44, Notice of Intent to Request Denial or Suspension["], which includes a section for an Answer to Notice of Intent;

2. Notification that the obligor may request an administrative hearing contesting the action as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~]; and

3. Notification that the ["]CS-63, Notice to Licensing/Certification Board or Agency["] shall be rescinded if the obligor:

a. Takes action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation; or

b. Complies with a subpoena or warrant, in accordance with KRS 205.712(11);

(c) Refer the case for parent-locator service, if the CS-44 is returned and the forwarding address unknown;

(d) Send to the issuing agency or board of licensure or certification a CS-63, if;

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (b)3 of this subsection;

(e) Send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

1. A license or certificate denial;

2. Suspension; or

3. Revocation; and

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Takes action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation; or

2. Complies with a subpoena or warrant.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(4) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have ten (10) calendar[~~10 (ten)~~] days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation to release the vehicle boot.

(c) If the requirements in paragraph (b) of this subsection are met the:

1. Obligor shall pay the:

a. Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

b. Cost of towing and storage if a charge is incurred; and

2. Cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(5)[~~(4)~~] A newspaper publication of a list of delinquent obligors, as established in KRS 405.411, provided by the Cabinet for Health and Family Services, Department for Community Based Services, Division of Child Support, shall:

(a) Identify an obligor as specified by subsection (7)(a) of this section;

(b) Include the name, last known address, and the amount owed of the obligor meeting the criteria; and

(c) Be published no less than twice yearly.

[~~(5) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).~~]

(6) If the obligor owes an arrearage of $2,500 or more, in accordance with 42. U.S.C. 652, the cabinet shall:

(a) **Take the action required by KRS 205.712(8)**[~~Send in advance, a CS-122 notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, as established in KRS 205.712(8)~~];

(b) **Provide the advance notice to the obligor required by KRS 205.712(8) by sending the obligor a CS-122**[~~Forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation~~]; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than $2,500;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than $2,500; or

4. The obligor takes action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation.

(7) If an obligor owes an arrearage equal to or greater than $10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor's nonpayment within the last six (6) months;

2. The obligor's known address;

3. The cabinet is the payee for support; and

4. Audited arrearages by the cabinet within the last year;

(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, as established in KRS **15.055 and** 205.712(16);

(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection the [“]CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing[”];

(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation;

(e) Accept an obligor's request for an administrative hearing as specified in 921 KAR 1:430[~~Section 4 of this administrative regulation~~];

(f) Refer the case for parent-locator service if the notice is returned and the forwarding address unknown;

(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:

1. No dispute;

2. A hearing that results in a finding that the case qualifies for the delinquent listing; or

3. No action taken by the obligor as specified in Section 2(4)(g)[~~3~~] of this administrative regulation; and

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor takes action as specified in Section 2(4)(g)[~~3~~] of this administrative regulation.

(8) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:

(a) Pursue action in accordance with the provisions of subsection (2) of this section; and

(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

Section 4. [~~Appeal Procedures. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.~~

~~(2) An obligor may request and be granted an administrative hearing in accordance with KRS 405.450 based upon a mistake in fact, as defined in KRS 205.712(13), pertaining to an incorrect:~~

~~(a) Person identified as an obligor; or~~

~~(b) Current or past due support obligation.~~

~~(3) A request shall be made to the cabinet:~~

~~(a) In writing;~~

~~(b) In person; or~~

~~(c) Orally, later reduced to writing within the time frames as specified in subsection (4) of this section.~~

~~(4) The written request for an administrative hearing shall be considered timely if made within the timeframes established in an initial notice as follows:~~

~~(a) Ten (10) days for:~~

~~1. Income withholding; or~~

~~2. Intent to boot a vehicle;~~

~~(b) Fifteen (15) days for unemployment insurance withholding;~~

~~(c) Twenty (20) days for:~~

~~1. Order to withhold;~~

~~2. Lien;~~

~~3. Intent to request denial or suspension of a license or certificate; or~~

~~4. Intent to place the obligor's name on a delinquent listing; or~~

~~(d) Thirty (30) days for intent to collect past-due support.~~

~~(5)(a) Prior to a hearing, the cabinet or designee shall schedule and hold an informal dispute conference with an obligor within ten (10) days of receiving the hearing request to attempt to resolve a dispute.~~

~~(b) If the informal dispute conference does not resolve the hearable issue, the cabinet or designee shall schedule an administrative hearing.~~

~~Section 5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/06;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/06;

(c) "CS-68 Order to Withhold", edition 3/08[~~9/06~~];

(d) "CS-69 Answer to Withhold", edition 9/06;

(e) "CS-70 Release of Order to Withhold", edition 9/06;

(f) "CS-72 National Medical Support Notice", edition 9/06;

(g) "CS-73 Unemployment Insurance Letter", edition 3/08[~~9/06~~];

(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 3/08[~~9/06~~];

(i) "CS-78 Payment Agreement", edition 9/06;

(j) "CS-83 Order to Deliver", edition 9/06;

(k) "CS-85 Notice of Lien", edition 9/06;

(l) "CS-89 **Income Withholding for Support**[~~Order/Notice to Withhold Income for Child Support~~]", edition 3/08[~~9/06~~];

(m) "CS-92 Intrastate Notice of Lien", edition 3/08[~~9/06~~];

(n) "CS-119 Noncustodial Parent's Notice of Lien", edition 3/08[~~9/06~~];

(o) "CS-120 Release of Lien" edition 9/06;

(p) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/06;

(q) "CS-121. 1. Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 3/08[~~9/06~~];

(r) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 3/08[~~9/06~~];

(s) "CS-164 Notice of Income Withholding" edition 9/06; and

(t) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 3/08[~~9/06~~].[~~;~~]

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ily 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. Secretary
APPROVED BY AGENCY: December 10, 2007
FILED WITH LRC: December 14, 2007 at 4 p.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Support
(As Amended at ARRS, February 11, 2008)

921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 13B, 15.055, 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110(4)(f), 341.392, 341.420, 405.411, 405.440(4), 405.450(5), 405.463, 405.465, 405.467, 405.470, 405.490(4)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 205.712, 45 C.F.R.[~~302.10,~~] 303.35**, 42 U.S.C. 666**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. **42 U.S.C. 666 requires each state to have in effect procedures to increase the effectiveness of the Child Support Program**[~~–45 C.F.R. 302.10 requires each state to administer a Child Support Program. KRS 205.712 assigns the administration of the Child Support Program to the cabinet~~]. 45 C.F.R. 303.35 requires the agency administering the Child Support Program to develop a procedure for administrative reviews of child support cases for individuals with complaints. KRS Chapter 13B establishes the administrative hearing process to be followed in the Commonwealth. KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:
(a) On the part of the Division of Child Support; and
(b) That affects the child support case of the individual.
(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:
(a) Legal counsel;
(b) A relative; or
(c) Any other person.
(3) An administrative hearing shall be conducted by an administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch:
(a) In the county of residence for the appellant or child; or
(b) By telephone or at an alternate location, if the appellant:
1. Is unable to travel; and
2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.
(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.
(5) Child support staff shall schedule and hold an informal interview or conference with an aggrieved individual:
(a) Within ten (10) calendar days of receiving the individual's hearing request;
(b) Prior to an administrative hearing being scheduled; and
(c) To attempt resolution of the dispute.
(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Administrative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing by:
(a) Completing and submitting a CS-180, Request for Administrative Hearing;
(b) Submitting a written request; or
(c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.
(2) An administrative hearing request shall be submitted to the:
(a) Child support contracting official's office in the appellant's county of residence; or
(b) Division of Child Support's central office.
(3) The count of days specified in subsection (4) of this section shall begin from the date of:
(a) Issuance, if the notice is sent by first class mail; or
(b) Receipt, if the notice is personally served or sent by certified mail.
(4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:
(a) Ten (10) calendar days of:
1. An income withholding notice;
2. A notice of intent to boot a vehicle, in accordance with KRS 205.745(9); or
3. A notice of intent to request a credit report, in accordance with KRS 205.7685;
(b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;
(c) Twenty (20) calendar days of:
1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);
2. An order to withhold assets, in accordance with KRS 405.490(4);
3. A request for denial or suspension of a license or certificate;
4. A lien notice, in accordance with KRS 205.745(6); or
5. A notice to place the obligor's name on the delinquent listing; or
(d) Thirty (30) calendar days of a:
1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);
2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or
3. Notice regarding the collection of past-due support[,] in accordance with KRS **154A.060(2)(g), 205.712(17), and** 205.769.
(5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:
(a) Person identified as an obligor; or
(b) Current or past due support obligation.
(6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:
(a) Families and Children Administrative Hearings Branch, as specified in [~~this~~] Section **3 of this administrative regulation**; or
(b) Child support office that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.
(2) A notice of an administrative hearing shall:
(a) Comply with the requirements of KRS 13B.050(3);
(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
(c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in Section **4(3)**[~~5~~] of this administrative regulation.

(3) Pursuant to KRS 405.450(1), the cabinet shall schedule an administrative hearing within sixty (60) calendar days of an individual's hearing request.

(4) An administrative hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request is not based on a mistake of fact as specified in Section 2(5) of this administrative regulation;

(b) Request is untimely and good cause, as defined in subsection (3) of this section, is:

1. Not claimed; or

2. Found not to exist.

(c) Appellant submits a written request to withdraw the administrative hearing request; or

(d) Appellant or **an** authorized representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.

(2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days **of receipt of a notice to provide good cause**.

(3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the right to request an administrative hearing on the notice received;

(c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period;

(d) **Was suffering from a serious illness;**

(e) Was caring for[~~Or~~] an immediate household member **who** had a serious illness; or

(f)[~~(e)~~] Was not at fault for the delay of the request, as determined by the hearing officer.

(4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant's Rights. (1) An appellant or an appellant's legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3).

(2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant's authorized representative if the appellant provides written authorization **that**[~~which~~] is:

(a) Signed in the presence of child support staff who shall also sign as a witness; or

(b) Notarized.

(3) An appellant or representatives shall have the right to:

(a) Examine, prior to the hearing:

1. The list of witnesses to be called during the hearing;

2. Evidence to be presented at the hearing; and

3. Other information in the cabinet's possession that pertains to the hearing;

(b) Present witnesses or documents to support the appellant's claim; and

(c) Appeal the decision of the final order of the hearing to Circuit Court **in accordance with KRS 13B.140**[~~within thirty (30) calendar days of the date the final order was mailed~~].

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of:

(a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the Commissioner of the Department for Community Based Services or designee is issued, in accordance with KRS 405.450(2); or

(b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be:

1. Enforceable; and

2. Paid by the obligor pending receipt of the final order.

(2) If the action taken on behalf of the Division of Child Support is:

(a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or

(b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested.

(3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order **that**[~~which~~]:

(a) Summarizes the facts of the case;

(b) Specifies the address where a party to the hearing may send an exception to the recommended order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal laws and regulations.

(2) In accordance with KRS 13B.110, the hearing officer shall issue the recommended order to the Commissioner of the Department for Community Based Services or designee within sixty (60) calendar days of the close of the hearing record.

(3) A copy of the recommended order shall be sent to the:

(a) Appellant or representative;

(b) Child support staff that attended the administrative hearing; and

(c) Designated staff of the Division of Child Support's central office.

Section 8. Written Exceptions. (1) If a party to the hearing disagrees with the recommended order, the party may file a written exception with the Commissioner or designee.

(2) A written exception shall:

(a) Be filed **in accordance with KRS 13B.110(4)** [~~within fifteen (15) calendar days of the date the recommended order was mailed~~];

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to the other parties that attended the administrative hearing.

Section 9. Final Order. (1) A final order shall be issued:

(a) In accordance with KRS 13B.120;

(b) By the commissioner or designee on behalf of the cabinet; and

(c) Within ninety (90) calendar days of the recommended order, unless the recommended order is remanded in accordance with KRS 13B.120(4).

(2) If the final order differs from the recommended order, the final order shall **comply with**[~~include findings and conclusions different from those in the recommended order pursuant to~~] KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", edition 3/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 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. Secretary

APPROVED BY AGENCY: December 10. 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, February 11, 2008)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections **1(6)**[~~1(5)~~], 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), [~~(6),~~] (7), **(8), (12),**[~~(10),~~] 3(4);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(7); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) **Service**[~~A service~~] by a caretaker shall be **provided**[~~made~~] to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) **Service**[~~A service~~] by a caretaker shall be **provided**[~~made~~] at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), [~~(6),~~] (7), **(8), (12),**[~~(10),~~] and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(7); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), [~~(6),~~] (7), **(8), (12),**[~~(10),~~] and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(7); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard **of need is**[~~shall be based on the living arrangement of an eligibility determination~~] as follows:

(a) **For a**[~~A~~] resident of a personal care home [~~made~~] on or after January 1, 2008, $1,157[~~2007, $1,143~~];

(b) **For a**[~~A~~] resident of a family care home [~~made~~] on or after January 1, 2008, $809[~~2007, $795~~]; or

(c) **For individuals who receive caretaker services**[~~Caretaker~~]:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability[~~made~~] on or after January 1, 2008, $699[~~2007, $685~~];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care[~~made~~] on or after January 1, 2008, $1,017[~~2007, $1,003~~]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care[~~made~~] on or after January 1, 2008, $1,071[~~2007, $1,049~~].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem **for a state supplementation recipient in the personal care home's care as of the first calendar of a qualifying month**[~~:~~

~~1. For a state supplementation recipient in the personal care home's care; and~~

~~2. As of the first calendar day of a qualifying month;~~]

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a **population that is** thirty-five (35) percent mental illness or mental retardation **clients**[~~population~~] in all of its occupied licensed personal care home beds **and** who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an "STS-1, Mental Illness/Mental Retardation (MI/MR) Supplement Program Application for Benefits", [~~Application for Mental Illness or Mental Retardation Supplement Program Benefits"~~] with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail an "STS-2, Notice of Decision to Personal Care Home" to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an "STS-3, Mental Illness/Mental Retardation (MI/MR) Supplement Program Monthly Report Form" that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the STS-3 to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) **To the extent cabinet funds are available to support the training,** a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars**, to the extent funds are available,** to a personal care home:

(a) **That**[~~Who~~] has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection **conducted** in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall [~~also~~] be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent **of the population is** mental illness or mental retardation **clients**[~~population~~], as specified in Section 12(1)(c)2 of this administrative regulation,[~~is met~~] on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "STS-4, Mental **Illness/Mental**[~~Illness or Mental~~] Retardation Supplement Certification Survey" within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department **by**[~~:~~

~~(a) Monthly; and~~

~~(b) By~~] the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, **in accordance with** [~~established in~~] 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, **by filing an STS-1 in accordance with**[~~as specified in~~] Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness/Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/07;

(b) "STS-2, Notice of Decision to Personal Care Home", edition 1/07;

(c) "STS-3, Mental Illness/Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/07; and

(d) "STS-4, Mental **Illness/Mental**[~~Illness or Mentally~~] Retardation Supplement Certification Survey", edition 1/07.

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

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, February 11, 2008)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, 17.165, Chapter 157, 199.011(4), 199.892, 199.894**(1), (3)**, 199.896, 199.898, 600.020(1), 620.030(3), 45 C.F.R. 98.2, 42 U.S.C. **601-619**[~~9801 et seq.~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS **194A.050(1)**[~~194A.05(1)~~] requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process [~~licensure requirements for child day care centers~~].

Section 1. Definitions.(1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child" is defined by KRS 199.011(4).

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Developmentally appropriate" means suitable for the specific age range of the child.

(5) **"Nontraditional hours" means the hours of:**

(a) 6 p.m. through 6 a.m. Monday through Friday; or

(b) 6 p.m. on Friday until 6 a.m. on Monday.

(6) "Parent" is defined by 45 C.F.R. 98.2.

(7)[~~(6)~~] "Secretary" **is defined by KRS 199.011(1)**[~~means the Secretary for the Cabinet for Health and Family Services.~~

~~(7) "Nontraditional hours" means the hours of:~~

~~(a) 6 p.m. through 6 a.m. Monday through Friday; or~~

~~(b) 6 p.m. on Friday until 6 a.m. on Monday.~~]

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center**. This**[~~is a~~] child-care center **shall be** licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee**; and**[~~.~~]

(2) A Type II child-care center**. This child-care center shall be**[~~is the~~] primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. **The following child-care settings shall be**[~~Child care settings~~] exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120[~~are~~]:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization[~~in~~] which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted; and

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) **Which**[~~In which~~] a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-RCC-1, Application for a License to Operate a Child Care Center [~~Application for a License to Operate a Day Care Center, Form OIG-204~~].

(2) The issuance or reapproval [~~renewal~~] of a license shall be **governed**[~~considered~~] under the provisions of Sections 4 through 6[~~Section 5~~] of this administrative regulation.

(3) If the applicant for licensure is a:

(a) [~~A~~] Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) [~~A~~] Partnership, the application shall include a written statement from each partner that the partnership is current and viable.

(4) If the status of a corporation, partnership, or ownership of the child-care center[~~child-care facility~~] changes, the new entity shall submit a completed OIG-RCC-1 [~~an application for licensure~~].

(5) If ownership of a child-care center [~~child-care facility~~] changes and the cabinet approves licensure upon inspection of the child-care center [~~facility~~] under the new ownership, the effective date on the license shall be the date of the approved inspection under the new ownership [~~retroactive to the date of final sale~~].

Section 5. [~~2.~~] License Issuance. (1) A license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(2) A director, employee, [~~or~~] volunteer, or any person with supervisory or disciplinary control over or having direct contact with a child shall submit to a background check; and [~~who submits to a voluntary background check at a child care center~~]

(a) May be employed or work with a child [~~children~~] on a probationary basis for up to ninety (90) calendar [~~180~~] days, pending completion of a:

1. Child abuse or neglect [~~central registry~~] check described in 922 KAR 1:470; and

2. Criminal records check required by KRS 199.896(19); and

(b) Shall not be left alone in the presence of a child if each required background check has not been completed.

(3) Upon completion of a child abuse or neglect[~~central registry~~] check or criminal records check, described in subsection (2)(a) of this section, a licensee shall discharge immediately[~~from employment~~] a director,[~~or~~] employee, volunteer, or any person:

(a) Whose name is listed on the central registry established by 922 KAR 1:470; or

(b) Who has been convicted of a crime defined by KRS 17.165(1) through [~~or~~] (3).

(4) An applicant who has been convicted of a nonviolent felony or misdemeanor shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after conviction.

(5) [~~A child care center may request that a volunteer submit to a voluntary:~~

~~(a) Child abuse or neglect central registry check as specified in 922 KAR 1:470; and~~

~~(b) Criminal records check.~~

~~(5) A volunteer who does not submit to a background check described in subsection (4) of this section shall:~~

~~(a) Be supervised by an employee for whom each background check required by KRS 199.896(19) has been completed; and~~

~~(b) Not be alone in the presence of a child.~~

~~(6) Effect of previous denial or revocation.~~

~~(a)~~] If an applicant for licensure has had a prior certification, license, registration, or permit to operate denied or revoked, the cabinet shall grant the applicant a license if:

(a)[~~1.~~] A three (3) [~~two (2)~~] year period has expired from the:

1. Date of the prior denial or revocation;

2. Last day of legal remedies being exhausted; or

3. Administrative hearing decision; and

(b) [~~2.~~] The applicant has:

1. **Demonstrated compliance**[~~a.~~] [~~The ability to comply~~] with the provisions of this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;

2.[~~b.~~] Completed, since the time of the prior denial or revocation, sixty (60) hours of training in **child development and**[~~developmentally appropriate~~] child care practice, approved by the cabinet or its designee; and

3.[~~c.~~] Not had an application, certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in KRS 199.896(19) or Section 10(2)[~~5(2)~~] of this administrative regulation.

(6)[~~(b)~~] If a license is granted after the three (3) [~~two (2)~~] year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary period during which the child-care [~~child care~~] center shall be inspected on at least a quarterly basis.

(7) A license shall specify:

(a) A particular physical location;

(b) A designated sponsor or owner as operator;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours[~~nighttime care~~];

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care [~~child care~~] center.

(8) To qualify for and maintain a license, a child-care [~~child care~~] center shall:

(a) Provide written documentation from the local authority [~~zoning commission~~] showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Provide written proof of liability insurance coverage of at least $100,000 per occurrence;

(f) Comply with provisions of this administrative regulation, [~~and~~] 922 KAR 2:110, and 922 KAR 2:120; [~~and~~]

(g) Cooperate with the state agency during an investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(3); and

(h) Have a director who meets the requirements listed in 922 KAR 2:110.

(9) A child-care center shall allow the cabinet or its designee and parent **of an enrolled child** unannounced access to the child-care center during the hours of operation.

(10) [~~(9) Corrective plans.~~

~~(a) The cabinet shall perform an on-site child care center inspection, described by KRS 199.896(14), in order to ascertain compliance with subsection (7) of this section. A regulatory violation identified during an inspection shall be reported to the child care center in a written statement of deficiency in accordance with KRS 199.896(5).~~

~~(b) A child care center not in compliance shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:~~

~~1. Specific action undertaken to correct a violation;~~

~~2. The date action was or is anticipated to be completed; and~~

~~3. Action utilized to assure ongoing compliance.~~

~~(c) The Cabinet for Health and Family Services shall review the plan and notify the child care center, in writing, of the decision to:~~

~~1. Accept the plan;~~

~~2. Not accept the plan; or~~

~~3. Deny, suspend, or revoke the child care center's license, in accordance with Section 5 of this administrative regulation.~~

~~(d) A notice of unacceptability shall state the specific reasons the plan is unacceptable.~~

~~(e) A child care center notified of unacceptability of its plan shall:~~

~~1. Within ten (10) days of notification, submit an amended plan; or~~

~~2. Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).~~

~~(10)~~] A license shall be issued and reapproved [~~renewed~~] if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).

(11) A license shall not be sold or transferred.

(12) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4), (5), and (6) shall be:

(a) In writing to the cabinet or its designee; and
(b) Signed by each owner listed on the license.
(13) The cabinet or its designee shall not charge a fee for acting upon reported changes.
(14) [~~the center.~~
~~(a) A licensee shall notify the cabinet, in writing, if there is a change to the child care center as listed in 922 KAR 2:110, Section 4(4) and (5).~~
~~(b) The notification shall be signed by each owner listed on the license application.~~
~~(c) A fee shall not be charged.~~
~~(d) Notification shall be submitted to the Division of Licensed Child Care, 275 East Main Street, Frankfort, Kentucky 40621.~~
~~(13)~~] The license shall be posted in a conspicuous place in the child-care [~~child care~~] center.
(15) [~~(14)~~] A child-care [~~child care~~] center shall not begin operation without a license to operate from the cabinet.
(16) [~~(15)~~] A child-care [~~child care~~] center operating without a license shall be subject to legal action.

Section 6. [~~3.~~] Fees. (1) A nonrefundable [~~An initial~~] licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).
(2) Licensing fees shall be:
(a) [~~A check or money order~~] Payable to the Kentucky State Treasurer;
(b) [~~shall be~~] Attached to the licensure application; and
(c) Paid by:
1. Cashiers check;
2. Certified check; or
3. Money order.[~~(3) A fee shall not be refunded if an inspection has been made by the cabinet or the State Fire Marshall's Office.~~]

Section 7. [~~4.~~] Annual Reapproval [~~Renewal~~].
(1) A licensee seeking reapproval [~~renewal~~] shall submit, one (1) month prior to license expiration, an OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center; and
(2) Meet the requirements specified in Sections 4 through 6 of this administrative regulation [~~Application for Renewal of a License to Operate a Day Care Center, Form OAG-204A~~].

Section 8. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).
(2) **Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a**[A] child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.
(3) A corrective action plan shall include:
(a) Specific action undertaken to correct a violation;
(b) The date action was or shall be completed; and
(c) Action utilized to assure ongoing compliance.
(4) The cabinet or its designee shall review the plan and notify the child-care center **within thirty (30) calendar days of receipt of the plan**, in writing, of the decision to:
(a) Accept the plan;
(b) Not accept the plan; or
(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 10 of this administrative regulation.
(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.
(6) A child-care center notified of the unacceptability of its plan shall:
(a) Within ten (10) calendar days of notification, submit an amended plan; or
(b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).
(7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may [~~suspend.~~] deny[~~,~~] or revoke an application for licensure or license.
(8) A statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days of notification in accordance with KRS 199.896(5)(c).

Section 9. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may, **based on the severity of the violation:**
(a) Require the provider to participate in additional training;
(b) Increase the frequency of monitoring by cabinet staff;
(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.
(2) An intermediate sanction **shall**[~~may~~] result in a suspension or revocation of the license if a child-care center:
(a) Fails to meet a condition of the intermediate sanction; or
(b) Violates a requirement of an intermediate sanction.

Section 10. [~~5.~~] Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or direct contact with, a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.
(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.
(3) A child abuse or neglect [~~central registry~~] check required by KRS 199.896(19) shall be conducted:
(a) One (1) time; and
(b) Within ninety (90) calendar days of initial employment [~~At the time an individual applies for:
1. Initial licensure on or after July 14, 2000; or
2. Employment in a child care center on or after July 14, 2000~~].
(4) A director, employee, volunteer, any person with supervisory or disciplinary control over, or having direct contact with, a child shall report to the licensee if: [~~Each volunteer who submits to a background check and each child care center employee, including a director, shall report to the licensee if, subsequent to each background check required by KRS 199.896(19), the volunteer or employee is:~~]
(a) Convicted of a violent crime or sex crime defined by KRS 17.165(1) through [~~and~~] (3);
(b) The subject of a cabinet child abuse or neglect investigation; or
(c) Found by the cabinet or a court to have abused or neglected a child.
(5) Each licensee shall report to the cabinet or its designee if the licensee, director, [~~an~~] employee, [~~or~~] volunteer, or another person who submitted to a background check meets a criterion of subsection (4)[~~(a) through (c)~~] of this section.
(6) Emergency action shall be taken in accordance with KRS 199.896(4).
(7) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).
(8) The cabinet may deny an applicant for a license if:
(a) The applicant has been previously denied or revoked;
(b) Denial or revocation proceedings were initiated and the licensee voluntarily relinquished the license;
(c) An appeal of a denial or revocation is pending;
(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation; or
(e) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied or revoked as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity.
(9) A child-care center's license shall be revoked if:
(a) A representative of the center interferes with a cabinet representative's ability to perform an official duty; or

(b) A cabinet representative or parent is denied access to:

1. A child; or

2. The child-care center.

(10) The cabinet or its designee shall suspend the license if regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4).

Section 11. [~~6.~~] Failure to Pay Civil Monetary Penalty. After sixty (60) calendar days of completing the administrative appeal process, a license shall be denied or revoked when a child-care center fails to:

(1) Pay the civil monetary penalty levied against the center; or

(2) Make arrangements to pay a civil monetary penalty and comply with the arrangement.

Section 12. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-RCC-3, Request for Appeal, [~~a written request~~] for a hearing. The request shall:

(a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-RCC-3 [~~a written request~~] for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 13. [~~7.~~] Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency [~~; and~~

~~(e) Specify whether the applicant for licensure or licensee requests a meeting with cabinet staff~~].

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The first-level informal dispute resolution meeting shall be conducted by:

(a) The regional program manager[~~,~~] or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar [~~five (5)~~] days of completion of the first-level informal dispute resolution meeting **or request**, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) [~~If a first-level informal review is requested in lieu of a dispute resolution meeting, the regional program manager or designee shall comply with the provisions of subsection (5)(a) through (c) of this section within ten (10) days of receipt of the request for first-level informal dispute resolution.~~

~~(7)~~] An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:

(a) Proceeding with a hearing according to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated [~~Licensed~~] Child Care or designee within ten (10) calendar days of receipt of the first level [~~regional program manager's~~] decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.

(7) [~~(8)~~] Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(8) [~~(9)~~] The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(9) [~~(10)~~] Within ten (10) calendar [~~five (5)~~] days of completion of the second-level informal dispute resolution meeting **or request**, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(10) [~~(11)~~] If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated [~~Licensed~~] Child Care or designee shall comply with the provisions of subsection (9)[~~(10)~~](a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.

(11) [~~(12)~~] If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(12) [~~(13)~~] If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.

(13) [~~(14)~~] A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(14) [~~(15)~~] Emergency action taken in accordance with Section 10(6) [~~5(6)~~] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 14. [~~8.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OIG-RCC-1, Application for a License to Operate a Child Care Center", edition 12/07; [~~OIG-204, Application for a License to Operate a Day Care Center, edition November 2000; and~~]

(b) "OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center", edition 12/07; and

(c) "OIG-RCC-3, Request for Appeal", edition 12/07. [~~OIG-204A, Application for Renewal of a License to Operate a Day Care Center, edition November 2000.~~]

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MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 12, 2007
FILED WITH LRC: October 12, 2007 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)-564-7905, fax (502)-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, February 11, 2008)

922 KAR 2:100. Certification of family child-care [~~child care~~] homes.

RELATES TO: KRS Chapter 13B, [~~13B.005-13B.070, 13B.125,~~] 17.165, 186.020, 194A.050(1), 199.011(2), 199.894(5), 199.896(18), 199.898, 199.8982, 214.036, 314.01(5), 600.020[~~(1)~~], 620.030, **16 C.F.R. 1508-1509,** 45 C.F.R. 98.2, 49 C.F.R. 571.213.
STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1) 199.8982(1)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care [~~child care~~] home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care [~~child care~~] home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care [~~child care~~] home providers.

Section 1. Definitions. (1) "Assistant" means a person:
(a) [~~Sixteen (16) years of age or older;~~
~~(b) Under direct supervision of a provider or substitute provider; and~~
~~(c)~~] Who meets the requirements listed in Section 2(5)[~~(4)~~][~~(3)~~] and Section 9(7), (8), and (9) of this administrative regulation; and
(b) **Whose work is**[~~Who works~~] either paid or unpaid.
(2) "Cabinet" is defined by the KRS 199.011(2).
(3)[~~(2)~~] "Child" **is defined by KRS 199.011(4)**[~~means a person under~~]:
(a) Thirteen (13) years of age; or
(b) Eighteen (18) years of age if the minor has a special need in which supervision is required.
(4)[~~(3)~~] "Corporal physical discipline" is defined by KRS 199.896(18).
[~~(4) "Employee" means a person who:~~
~~(a) Works either paid or unpaid for a certified family child care home provider; and~~
~~(b) Meets the requirements of Sections 2(2)(a), (3), and (6) of this administrative regulation.~~]
(5) "Family child-care [~~child care~~] home" is defined by KRS 199.894(5).
(6) "Health professional" means a person currently licensed as a:
(a) Physician;
(b) Physician's assistant;
(c) Advanced registered nurse or practitioner; or
(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.
(7)[~~(6)~~] "Home" means the private primary residence of the certified family child-care [~~child care~~] home provider and contiguous property.
(8)[~~(7)~~] "Infant" means a child who is less than twelve (12) months of age.
(9) "Parent" is defined by 45 C.F.R. 98.2.
(10) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:
(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between the provider and the parent; or
(d) Other activity designed to engage a parent in the program's activities.
(11) "Premises" means the building and contiguous property in which child care is provided and certified.
(12)[~~(8)~~] "Provider" means an owner, operator, or person who:
(a) Cares for a child in the provider's own home [~~Provides care for preschool children, school-age children, or both, inside his own home for less than twenty-four (24) hours a day~~];
(b) Is not required to be licensed under 922 KAR 2:090; and
(c) Meets the requirements of Section 2 of this administrative regulation.
(13) "Related" means **having one (1) of the following relationship with the provider:**
1. Child;
2. Grandchild;
3. Niece;
4. Nephew;
5. Sibling;
6. Step-child; or
7. Child in legal custody of the provider.[~~the child, grandchild, niece, nephew, sibling, step-child, or child in legal custody of the provider.~~]
(14) "School-age child" means a child attending kindergarten, elementary, or secondary education.
(15) [~~(9) "Provider's own related children" means:~~
~~(a) The provider's own child or children;~~
~~(b) A child or children in the provider's legal custody;~~
~~(c) The provider's grandchild or grandchildren;~~
~~(d) The provider's niece or nieces;~~
~~(e) The provider's nephew or nephews;~~
~~(f) The provider's stepchild or stepchildren; or~~
~~(g) The provider's sibling.~~
~~(10) "Substitute provider" means a person who shall:~~
~~(a) Be used in the absence of a certified family child care home provider; and~~
~~(b) Meet the requirements of Section 10(8) and (9) of this administrative regulation.~~
~~(11)~~] "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The cabinet or its designee [~~Department for Community Based Services~~] shall be responsible for certifying a family child-care [~~child care~~] home.
(2) [~~Effective January 1, 2009,~~] An [~~initial~~] applicant for certification shall:
(a) Be at least eighteen (18) years of age;
(b) [~~Have a:~~
~~1. High school diploma;~~
~~2. A General Equivalency Diploma (GED);~~
~~3. Qualifying documentation from a comparable education entity; or~~
~~4. Commonwealth Child Care Credential as described in 922 KAR 2:250;~~
~~(c)~~][~~(b)~~] Submit within ninety (90) days of initiation of the application process:
1. A completed OIG-RCC-4 [~~DCC-178~~], Application for Certified Family Child Care Home [~~Certification~~];
2. A completed OIG-RCC-6 [~~DCC-179~~], Self-Check List; [~~and~~]
3. A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);
4. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;
5. Documentation of [~~(c) Meet~~] the requirements of KRS 199.8982(1)(a)**1 through 3 and 5**[~~2 thru 3 and 5~~]; [~~and~~]
6. A OIG-RCC-5, Central Registry Check, to complete a child abuse or neglect check [~~(d) Submit to a check of the central registry~~] in accordance with 922 KAR 1:470; and
7. A completed criminal records check for the previous state of residence if the applicant has resided outside the state of Kentucky in the last five (5) years; and

(c)[~~(d)~~] Obtain commercial liability insurance of at least $50,000 per occurrence

(3) Effective January 1, 2009, an initial applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 92 KAR 2:250.

(4) An applicant shall be currently certified by a [~~cabinet-approved~~] agency **approved in accordance with 922 KAR 2:240, Section 15** in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5)[~~(4)~~][~~(3)~~] An adult living in the home of the applicant and the[~~, an~~] applicant's assistant [~~, employee, and substitute~~] shall submit:

(a) To a criminal records check required by KRS 17.165 within **a year prior to application**[~~the past year~~] by the Justice Cabinet [~~Kentucky State Police~~] or Administrative Office of the Courts;

(b) To a child abuse or neglect check on OIG-RCC-5 [~~check of the central registry~~] in accordance with 922 KAR 1:470; and

(c) A copy of the results of a negative tuberculosis skin test or a health professional's statement documenting that the adult. [~~Written verification from a licensed health care professional or a health department that the individual~~] is free of active tuberculosis.

(6)[~~(5)~~] An applicant of assistant who has been convicted of a non-violent felony or misdemeanor may be approved on **a** case by case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after the conviction.

(7)[~~(6)~~][~~(4)~~] Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b).

(8)[~~(7)~~][~~(5)~~] If the requirements of subsections (1) through (7)[~~(6)~~] [~~(2) and (3)~~] of this section, Section 3, and Sections 9 through 17 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982 [~~for a two (2) year period~~].

(9)[~~(8)~~][~~(6)~~] Within three (3) months of submission to the cabinet of a complete OIG-RCC-4 [~~DCC-178~~], an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with [~~as required by~~] KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 9(1) of this administrative regulation.

(10)[~~(9)~~][~~(7)~~] The family child-care [~~child care~~] home certificate shall:

(a) Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

(b) Contain the:

1. [~~The~~] Name and address of the child care provider;

2. Maximum number of unrelated children who may be served;

3. Identification number; and

4. Effective and expiration date; and

(c) Be valid for only the:

1. Name of the individual authorized on the certificate to operate a family child child-care [~~child care~~]; and

2. Residential address printed on the certificate.

(11)[~~(10)~~][~~(8) Family child care certification shall be renewed every two (2) years. The family child care home provider shall submit at least one (1) month prior to the expiration of certification:~~

~~(a) A completed DCC-178, Application for Family Child Care Certification;~~

~~(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);~~

~~(c) A physician's statement documenting the family child care home provider's health is satisfactory for continued operation of a family child care home; and~~

~~(d) Proof that the family child care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 14 of this administrative regulation.~~

~~(9)~~] A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-RCC-4 [~~DCC-178, Application for Family Child Care Certification~~]; [~~and~~]

(c)[~~(b)~~] An inspection of the new home**; and**

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) Family child-care certification shall be renewed every two (2) years.

(2) The family child-care home provider shall submit one (1) month prior to expiration of certification:

(a) A completed OIG-RCC-4;

(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 9 through 17 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the application;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home**; within fifteen (15) calendar days of receipt of the application** if the requirements in Sections 2, 3, and 9 through 17 of this administrative regulation are met.

Section 4. Denial of Application for Certification. (1) An application for initial certification or renewal of certification as a family child-care [~~child care~~] home provider shall be denied if the applicant, assistant, [~~employee, substitute,~~] or an adult residing in the household [~~who has direct contact with a minor~~] has:

(a) Abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470; or

(b) A history of behavior that may impact the safety or security of a child in care including:

1. A criminal conviction of a **sex crime or violent crime**[~~violent crime or sex crime~~] as defined in KRS 17.165**(1) and (3)**;

2. A conviction for a drug-related felony; or

3. Other behavior or condition indicating inability to provide reliable care to a child.

(2) An application for certification as a family child-care [~~child care~~] home **provider** shall be denied if the applicant:

(a) Fails to comply with the minimum certification standards specified in Sections 9 through 17 [~~10 through 14~~] of this administrative regulation and KRS 199.8982; or

(b) Knowingly misrepresents or submits [~~offers~~] false information on the application or other form required by the cabinet or its designee [~~, pursuant to 922 KAR Chapter 2~~].

(3) Effect of previous denial or revocation. [~~:~~]

(a) If an applicant for certification has had a prior certificate or license to operate a child care business denied or revoked, the cabinet shall grant the applicant a certificate to operate a family child-care [~~child care~~] home if:

1. A two (2) year period has expired from the:

a. Date of the prior denial or revocation;

b. Last day of legal remedies being exhausted; or

c. Date of the Final Order from an administrative hearing; and

2. The applicant has:

a. The **proven** ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, certificate, or license to operate as a child care provider denied or revoked for:

(i) Conviction of a **sex crime or violent crime**[~~violent crime or sex crime~~] as defined in KRS 17.165**(1) and (3)**; or

(ii) Abuse or neglect of a child according to a check of the central registry in accordance with 922 KAR 1:470.

(b) If a certificate is granted after the two (2) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 5.[~~4.~~] Intermediate Sanctions. (1) If the cabinet determines that a certified family child-care [~~child care~~] home provider is in violation of this administrative regulation, the cabinet **may, based on the severity of the violation**[~~shall~~][~~may~~]:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or

(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall [~~may~~] result in a [~~nonemergency~~] suspension or revocation of certification if a certified family child-care [~~child care~~] home provider:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 6.[~~5. Nonemergency Suspension. (1) If the cabinet determines that a certified family child care home provider is in violation of this administrative regulation or fails to correct a deficiency by the date specified on the corrective action plan, a nonemergency suspension for a period not to exceed sixty (60) calendar days may occur.~~

~~(2) At least thirty (30) calendar days prior to the start date of a nonemergency suspension, a certified family child care home provider shall receive by personal service or through certified mail, return receipt requested, a written notice from the cabinet that:~~

~~(a) Specifies the:~~

~~1. Effective date;~~

~~2. Duration of the suspension; and~~

~~3. Corrective action necessary for reinstatement of the certification;~~

~~(b) Explains the reason for the suspension;~~

~~(c) Advises the family child care home provider of the right to request an appeal prior to the effective date of the nonemergency suspension;~~

~~(d) Specifies that the nonemergency suspension shall be stayed if an appeal is requested;~~

~~(e) Specifies that if the provider does not request an appeal of the nonemergency suspension or if the nonemergency suspension is upheld following the hearing, the provider shall cease operation of the family child care home during the period recommended for suspension;~~

~~(f) Specifies that suspension may lead to revocation; and~~

~~(g) Requires the family child care home provider to surrender the certificate of operation to the cabinet when the suspension becomes effective.~~

~~(3) If a certified family child care home provider's certification has been suspended for a nonemergency reason, the cabinet or designated staff shall make reasonable efforts to:~~

~~(a) Notify a parent of each child in care; and~~

~~(b) Assist the parent in securing alternate child care arrangements.~~

~~(4) By the end of the nonemergency suspension period, certification shall be:~~

~~(a) Reinstated; or~~

~~(b) Revoked for failure to take corrective action necessary for reinstatement of the certification.~~

~~Section 6. Emergency~~] Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125, by issuing an emergency order that results in suspension of the operation of a certified family child-care [~~child care~~] home. (1) An emergency order shall:

(a) Be served to a certified family child-care [~~child care~~] home provider in accordance with KRS 13B.050(2); [~~by:~~

~~1. Certified mail, return receipt requested; or~~

~~2. Personal service;~~] and

(b) Specify the regulatory violation that caused the emergency condition to exist [~~corrective action necessary for reinstatement of certification~~].

(2) Upon receipt of an emergency order, the provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer [~~Assist~~] a parent for assistance in locating [~~securing~~] alternate child care arrangements.

(4) The provider's certification for operation of a family child-care [~~child care~~] home shall be revoked if:

(a) The provider does not request a hearing; or

(b) The condition that resulted in the emergency order is [~~has~~] not [~~been~~] corrected **within thirty (30) calendar days of service of the emergency order**.

Section 7. Revocation.(1) A family child-care [~~child care~~] home provider's certification shall be revoked if the provider:

(a) Knowingly misrepresents or submits [~~offers~~] false information on the application or other form required by the cabinet or its designee [~~pursuant to 922 KAR Chapter 2~~];

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by a parent or cabinet representative to:

1. A child; or

2. Space in the home used for child care;

(d) Is convicted of a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care [~~child care~~] home due to a medical condition; or

(f) Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 9 through 17 [~~10 through 14~~] of this administrative regulation.

(2) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of revocation [~~from the cabinet shall be~~] delivered by personal service or through certified mail[~~, return receipt requested,~~] at least thirty (30) calendar days prior to the effective date of the revocation.

(3)The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care [~~child care~~] home upon revocation;

(c) Advise the family child-care [~~child care~~] home provider of the right to request an appeal on an OIG-RCC-7, Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care [~~child care home~~] provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4)[~~(3)~~] If a provider's certification has been revoked, the cabinet or its designee and the provider [~~designated staff~~] shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer [~~Assist~~] the parent for assistance in locating [~~securing~~] alternate child care arrangements.

Section 8. Appeal of Denials, Intermediate Sanctions, [~~Nonemergency~~] Suspension, and Revocation. (1) If the cabinet denies certification, imposes an intermediate sanction, suspends certification [~~for a nonemergency situation~~], or revokes certification, the family child-care [~~child care~~] home provider may request an appeal by completing an OIG-RCC-7. **Upon request of the appeal, the provider**[~~and~~] shall be afforded a hearing in accordance with KRS Chapter 13B.

[~~(2) If an intermediate sanction or nonemergency suspension leads to revocation of certification, no further appeal shall be permitted~~.

~~Section 9. Appeal of Emergency Suspension. (1) A certified family child care home provider may appeal an emergency order suspending operations, in compliance with KRS 13B.125(3).~~]

(2) If a hearing officer's final order from an administrative hearing does not uphold a [~~an emergency~~] suspension, the provider may resume providing child care.

Section 9. [~~10.~~] Standards for the Provider. (1) [~~Upon approval of certification as a family child care home,~~] The provider shall [~~:~~

~~(a) Meet minimum requirements established in KRS 199.8982 and Sections 2, 3, and 10 through 14 of this administrative regulation;~~

~~(b)~~] complete annually at least nine (9) [~~six (6)~~] hours of cabinet-approved child development training beginning with the second year of operation [~~; and~~

~~(c) Obtain commercial liability insurance of at least $50,000 per child, per occurrence~~].

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) If the provider cares for more than four (4) infants, including the provider's own or related infants, the provider shall have an assistant present.

(4) A provider shall not care for more than six (6) children under the age of six (6) years old, including the provider's own or related children.

(5) The maximum number of unrelated children in the care of a certified family child-care [~~child care~~] home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(6) [~~The certified family child care home provider shall be currently certified in:~~

~~(a) Infant and child cardiopulmonary resuscitation or "CPR" by an agency approved by the cabinet or Board of Emergency Services; and~~

~~(b) Infant and child first aid by an agency approved by the cabinet or Board of Emergency Services.~~

~~(7)~~] If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours; and

(b) Employ an assistant [~~or employee~~] during the period of respite.

(7) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

(8) An assistant [~~A substitute provider~~] shall be:

(a) Eighteen (18) years of age or older;

(b) Under direct supervision of a provider;

(c) Used for providing care in a certified child-care home; and

(d) Used in the absence of the certified provider. [~~Certified by a cabinet-approved agency in:~~

~~1.Infant and child CPR; and~~

~~2. Infant and child first aid.~~]

(9) An assistant [~~A substitute provider~~] used in the absence of the family child-care [~~child care~~] home provider in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) [~~six (6)~~] hours of cabinet-approved training in:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; [~~and~~]

(c) Developmentally-appropriate child care practice; and

(d) Early care and education.

Section 10. The General Requirements of [~~11.~~] the Family Child-Care [~~Child Care~~] Home Environment. (1) The provider's home and each play area used for child care shall:

(a) Be **free from risk of harm in accordance with the requirements of this administrative regulation**[~~safe~~]; and

(b) Have adequate:

1. Heating and cooling [~~Heat~~];

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) **A new applicant or a provider who changes**[~~New applicants and providers who change~~] location [~~after the effective date of this administrative regulation~~] shall **have**[~~:~~

~~(a) Meet the requirements of subsection (2)(b) through (d) of this section; and~~

~~(b) Have~~] at least two (2) unblocked exits to the outside on each floor level used for child care.

(4) **The areas of the home that are**[~~The home and areas~~] accessible to children in care shall be free from items harmful to children including [~~of hazards and~~] the following items [~~shall be inaccessible to a child in care~~]:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages;

(f) Plastic bags; and

(g) Litter and rubbish.

(5) [~~Medication, including medicine that requires refrigeration shall be stored in a container or area with a lock to ensure a child is unable to access the medication within the container or area.~~

~~(6)~~] Guns and ammunition shall be stored away from the presence of children, in separate locked containers, [~~a locked container~~] which, in order to be opened, require [~~requires~~] a:

(a) Key; or

(b) Combination.

(6)[~~(7)~~] Electrical outlets not in use shall be covered.

(7)[~~(8)~~] An electric fan, floor furnace, or freestanding heater or fireplace[~~,~~] shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8)[~~(9)~~] The home shall have:

(a) At least one (1) working land-line**, unless the cabinet has been notified that the telephone is temporarily out of service** telephone on each level used for child care with a residential or commercial line; and

(b) A list of emergency numbers posted by each telephone, including numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care **and**[~~,~~] rescue squad; and

4. Poison control center.

(9)[~~(10)~~] Equipment and toys shall be:

(a) **Designated by the manufacturer as developmentally**[~~Developmentally~~] appropriate to the age of children in care;

(b) In sufficient quantity for the number of children in care; and

(c) Safe, sound, clean, and in good repair.

(10)[~~(11)~~] Television or video viewing by a child shall be limited to:

(a) Two (2) hours daily;

(b) The planned program activities; and

(c) Developmentally-appropriate child-related content**, as designated by standardized content guidelines**.

(11)[~~(12)~~] Stairs and steps used for children in care shall be:

(a) Solid;

(b) Safe; and

(c) Railed.

(12)[~~(13)~~] If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(13) [~~(14) The provider shall:~~

~~(a) Maintain first aid supplies that are easily accessible for use in an emergency, but these supplies shall be inaccessible to the children in care; and~~

~~(b) Wash superficial wounds with soap and water before bandaging.~~

~~(15) First aid supplies shall include a fully equipped first aid kit containing the following nonexpired items:~~

~~(a) Liquid soap;~~

~~(b) Adhesive bandages;~~

~~(c) Sterile gauze;~~

~~(d) Medical tape;~~

~~(e) Scissors;~~

~~(f) A thermometer;~~

~~(g) Flashlight;~~

~~(h) Cold pack;~~

~~(i) First-aid book;~~

~~(j) Disposable gloves; and~~

~~(k) A CPR mouthpiece.~~

~~(16)~~] Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

(a) Play; and

(b) Activities that meet the developmental needs of the children in care.

(14)[~~(17)~~] An outdoor play area shall be free of **unavoidable danger or risk**[~~hazards~~].

(15)[~~(18)~~] Each child in an outdoor play area shall be under the direct supervision of the provider[~~, substitute, employee,~~] or assistant.

(16)[~~(19)~~] Outdoor stationary play equipment shall be:

(a) Securely anchored;

(b) Developmentally appropriate;

(c) Age appropriate; and

(d) Safe.

(17)[~~(20)~~] A trampoline shall not be accessible to a child in the care of a provider.

(18)[~~(21)~~] A swimming pool on the premises shall:

(a) Be maintained;

(b) Have a water filtering system;

(c) Be supervised when in use; and

(d) Be inaccessible to children when not in use.

(19) An above-ground pool shall have:

(a) A stationary wall no less than four (4) feet tall; and

(b) Hand holds or foot holds that are inaccessible when the pool is not in use.[~~a stationary wall no less than four (4) feet tall with no hand holds or foot holds.~~]

(20)[~~(22)~~] A fire and tornado drill shall be conducted during hours of operation:

(a) At least monthly; and

(b) Documented.

(21)[~~(23)~~] An earthquake drill shall be conducted during hours of operation:

(a) At least quarterly; and

(b) Documented.

(22)[~~(24)~~] During hours of operation, the provider[~~,~~] and other persons in the home shall:

(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance prescribed by a physician; and

(b) Prohibit smoking in the presence of children in care.

(23)[~~(25)~~]During a provider's absence, an assistant [~~a substitute provider~~] shall be physically present at the home during hours of operation.

(24)[~~(26)~~] A provider shall not be employed outside of the home during regular hours of operation.

(25)[~~(27)~~] The home shall:

(a) Be clean;

(b) Be uncluttered;

(c) Be free of insects and rodents;

(d) Have a water supply that is:

1. Potable;

2. Adequate; and

3. From an approved public water supply; and [~~Properly located;~~

~~2. Protected;~~

~~3. Adequate; and~~

~~4. Of a source approved by the local health department; and~~]

(e) Have bathrooms, including toilets, sinks, and potty chairs that are:

1. Sanitary; and

2. In good working condition.

(26) A child shall wash hands with liquid soap and warm running water:

(a) Before and after eating or handling food;

(b) After toileting or diaper change;

(c) After handling animals;

(d) After wiping or blowing nose;

(e) After touching items soiled with body fluids or waste; and

(f) After outdoor and indoor play time.

(27)[~~(28)~~] The provider and an [~~,~~] assistant [~~, substitute, and each~~] shall:

(a) Wash hands with liquid soap and warm running water:

1. Before and after diapering a child;

2. Before and after feeding a child;

3. After toileting or assisting a child with toileting;

4. After handling animals;

5. Before dispensing medication;

6. After caring for a sick child; and

7. After wiping or blowing a child's or own nose.

(b)[~~Assure that a covered, leak-proof container is:~~

~~1. Available for soiled diapers;~~

~~2. Emptied daily; and~~

~~3. Cleaned daily;~~

~~(c) Use sanitary procedures when preparing and serving food;~~

~~(d)~~] Assure that a child shall not share:

1. Cups;

2. Eating utensils;

3. Wash cloths; [~~and~~]

4. Towels; and

5. Toiletry items.

(28) [~~(e) Refrigerate perishable food and beverages.~~

~~(29)~~] The refrigerator shall:

(a) Be in working order; and

(b) Maintain product temperature at or below forty-five (45) degrees Fahrenheit [~~Have a working thermometer demonstrating that the refrigerator is maintained at a temperature of forty-five (45) degrees Fahrenheit or below~~].

(29)[~~(30)~~] Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(30) [~~(31) Unless provided as part of the fee for child care, an infant's formula shall be prepared and provided by the parent.~~

~~(32) If more than one (1) bottle-fed child is in the care of the provider, each child's bottle shall be labeled.~~

~~(33)~~] While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped; [~~or~~]

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(31) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin. [~~An open area in the child care home shall be protected with screening~~] to prevent the entrance of vermin.

(32) [~~(34) Milk or milk products served shall be pasteurized.~~

~~(35) Meals shall:~~

~~(a) Be served in an amount appropriate to the age of the child; and~~

~~(b) Include appropriate types of food according to the age of the child.~~

~~(36) Breakfast shall include:~~

~~(a) Milk;~~

~~(b) Bread; and~~

~~(c) Fruit or vegetable or 100 percent juice.~~

~~(37) A snack shall include two (2) of the following:~~

~~(a) Milk;~~

~~(b) Protein source;~~

~~(c) Fruit or vegetable or 100 percent juice; or~~

~~(d) Bread.~~

~~(38) Lunch and dinner shall include:~~

~~(a) Milk;~~

~~(b) Protein source;~~
~~(c) Two (2) vegetables or a fruit and one (1) vegetable; and~~
~~(d) Bread.~~
~~(39) Windows and doors shall be screened for ventilation.~~
~~(40) A household pet shall be vaccinated for rabies.~~
~~(41)~~] Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.

(33)[~~(42)~~] Adequate space shall be provided at rest-time for each child in care more than four (4) hours:

(a) Rest-time area shall be comfortable, clean, safe, and in good repair.

(b) An individual bed, crib, play pen, two (2) inch thick waterproof mat, or cot with comfortable, clean, safe bedding shall be provided for each child.

(c) A crib or play pen shall meet the Consumer Products Safety Commission Standards **established in 16 C.F.R. 1508-1509**.

(d) [~~(b)~~] Individual linens shall be:

1. Provided for each child; and

2. Changed:

a. At least weekly; or

b. If soiled or wet, immediately.

(34)[~~(43)~~] If overnight care is provided, the caregiver shall:

(a) Remain awake until every child in care is asleep; and

(b) Sleep on the same floor level of the home as an infant or toddler.

(35) [~~; and~~
~~(c)1. Provide an individual bed, crib, playpen, or cot with comfortable, clean, and safe bedding for each child.~~
~~2. The crib or playpen shall meet the Consumer Products Safety Commission Standards.~~
~~(44)~~] A written and posted routine plan shall be established for daily:

(a) Activity;

(b) Opportunity for outdoor play; and

(c) Reading.

(36)[~~(45)~~] A child who is not asleep shall be visually supervised.

(37)[~~(46)~~] Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises without the caregiver.

(38)[~~(47)~~] Use of corporal physical discipline **shall be**[~~is~~] prohibited, pursuant to KRS 199.896(18).

(39)[~~(48)~~] A child shall be released from the family child-care [~~child care~~] home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

(40)[~~(49)~~] To assure a healthy environment, the provider shall maintain a:

(a) Current immunization certificate for each child within thirty (30) days of enrollment, unless an attending physician or parent objects to the immunization of a child pursuant to KRS 214.036;

(b) Written record [~~DCC-180, Child's Health and Emergency Information~~]:

1. Completed and signed by the child's parent [~~or guardian~~]; and

2. Retained on file on the first day the child attends, to [~~and~~] include:

a. The child's name, address, and date of birth;

b. The name of each individual to whom the child may be released;

c. The general status of the child's health;

d. Allergies or restrictions on the child's participation in activities, with specific instructions from the child's parent or physician;

e. The name and phone number of each person to be contacted in an emergency situation;

f. The name and phone number of the child's physician and preferred hospital; and

g. Authorization by the parent [~~or guardian~~] for the provider to seek emergency medical care in the parent's absence.

(41)[~~(50)~~] A provider shall provide immediate notification of a medical emergency to the:

(a) Parent;

(b) Person exercising custodial control; or

(c) Family physician, if the parent or person exercising custodial control is unavailable.

(42)[~~(51)~~] A quiet, separate area that is [~~can be~~] easily supervised shall be provided for a child too sick to remain with other children.

(43) [~~(52) Prescription medication shall not be administered to a child in care, except if authorized by:~~
~~(a) A licensed physician; and~~
~~(b) The daily written request of the parent or guardian.~~
~~(53) Nonprescription medication shall be administered to a child only with written daily request of parent or guardian.~~
~~(54)~~] The provider [~~caregiver~~] shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid;

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020**(1)**; and

(d) Maintain daily attendance records documenting the arrival and departure time of each child.

Section 11. Toilet and Diapering Requirements. (1) A toilet room shall:

(a) Have an adequate supply of toilet paper; and

(b) Be cleaned and sanitized daily.

(2) A sink shall be:

(a) Located in or immediately adjacent to toilets;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water no more than 110 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Immediately adjacent to a changing area used for infants and toddlers.

(3) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

(a) Emptied promptly; and

(b) Sanitized after each use.

(7) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered leak proof container temporarily; and

(c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(9) **If**[~~When~~] a child is being diapered the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of items not used for diaper changing.

(10) Unless prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(11) Staff shall disinfect the diapering surface after each child is diapered.

(12) If staff wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 12. Food Requirements. (1) The provider and assistant shall:

(a) Use sanitary procedures when preparing and serving food;
(b) Refrigerate perishable food and beverages; and
(c) Serve milk or milk products that are pasteurized.
(2) Meals shall:
(a) Be served in an amount appropriate to the age of the child; and
(b) Include appropriate types of food according to the age of the child.
(3) Breakfast shall include:
(a) Milk;
(b) Bread; and
(c) Fruit, vegetable, or 100 percent juice.
(4) A snack shall include two (2) of the following:
(a) Milk;
(b) Protein source;
(c) Fruit, vegetable, or 100 percent juice; or
(d) Bread.
(5) Lunch and dinner shall include:
(a) Milk;
(b) Protein source;
(c) Two (2) vegetables or one (1) fruit and one (1) vegetable; and
(d) Bread.
(6) A weekly menu shall be:
(a) Prepared;
(b) Dated;
(c) Posted in a conspicuous place;
(d) Kept on file for thirty (30) calendar days.
(7) Substitutions to a posted weekly menu shall be noted on the day the meal is served.
(8) Unless provided as part of the fee for child care **or the provider is a participant in the food program**, an infant's formula shall be **prepared, labeled, and provided by the parent.**[~~:~~]
(a) Prepared;
(b) Labeled; and
(c) Provided by the parent.
(9) Each child's bottle shall be:
(a) Labeled;
(b) Covered; and
(c) Refrigerated.

Section 13. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock.
(2) Prescription medication shall not be administered to a child in care, without a daily written request of the parent.
(3) Nonprescription medication:
(a) May be given to a child only with the written daily request of the:
1. Parent; or
2. Person exercising custodial control of the child; and
(b) Shall be administered according to the instructions on the label.
(4) Medications shall be:
(a) Labeled; and
(b) Administered according to directions.
(5) The provider shall:
(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and
(b) Wash superficial wounds with soap and water before bandaging.
(6) First aid supplies shall include a fully-equipped first aid kit containing the following nonexpired items:
(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) **Thermometer**[~~A thermometer~~];
(g) Flashlight;
(h) Cold pack;
(i) First-aid book;
(j) Disposable gloves; and
(k) [A] CPR mouthpiece.

Section 14. Animals. (1) Animals shall be:
(a) Supervised by an adult **if**[~~when~~] in the presence of children in care; and
(b) Certified as properly vaccinated [~~inoculated~~] against rabies.
(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.
(3) Animals that are considered **undomesticated,** wild, or exotic shall not be allowed in a family child-care home.

Section 15.[~~12.~~] Transportation. (1) If transportation is provided or arranged by the certified family child-care [~~child care~~] home provider, the provider shall:
(a) Have written permission from a parent [~~or guardian~~] to transport his **or her** child;
(b) Have a car or van equipped with seat belts;
(c) Require that a child:
1. Be restrained in an appropriate safety seat meeting federal motor vehicle safety standards in 49 C.F.R. 571.213[~~individually seat-belted~~];
2. Remain seated while the vehicle is in motion; and
3. If[~~a child is~~] under thirteen (13) years of age,[~~forty (40) inches in height:~~
~~a.~~] be transported in the back seat[~~; and~~
~~b. Restrained in a federally-approved motor vehicle safety seat in good repair~~];
(d) Have a valid driver's license issued by the Division of Motor Vehicles;
(e) Have emergency and identification information about each child in the vehicle if children are being transported; and
(f) Conform to state laws pertaining to vehicles, drivers license, and insurance pursuant to KRS 186.020.
(2) A child shall not be left unattended in a vehicle.
(3) The back of a pickup truck shall not be used to transport a child.

Section 16.[~~13.~~] Records. (1) A certified family child-care[~~child care~~] home provider shall maintain the confidentiality of a child's records.
(2) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).
(3) The provider shall:
(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and
(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(3).
(4) A certified family child-care home provider shall keep a written daily record of the times a child arrives and departs.
(5) **A certified**[~~Certified~~] family child-care home **provider**[~~providers~~] shall keep all records for five (5) years.

Section 17.[~~14.~~] Certified Family Child-Care[~~Child Care~~] Home Program. The certified family child-care [~~child care~~] home provider shall:
(1) Develop written information that specifies the:
(a) Rate for child care; [~~and~~]
(b) Expected frequency of payment for the program;
(c) Hours of operation; and
(d) Policy regarding:[~~:~~]
1. Late fees;
2. Holidays;
3. Vacation;
4. Illness; and
5. Emergency pick up;
(2) Make available a copy of the certification standards to each parent;
(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care[~~child care~~] home provider is not meeting the standards;
(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent and the cabinet or its designee access to the family child-care home at any time a child is in care;[~~to visit and observe the program during the hours of operation; and~~]

(6) Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(7) Post in a prominent area in the home:

(a) The staff to child ratios described in Section 9 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(8) Coordinate at least one (1) annual activity involving parental or family participation; and

(9) Maintain a written child care agreement with each child's parent [~~or custodian~~], including the name of each person designated by the parent to pick up the child.

Section 18.[~~15.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-RCC-4[~~DCC-178~~], Application for Certified Family Child Care Home" [~~Certification~~], edition 12/07 [~~11/03~~];

(b) "OIG-RCC-5 [~~DCC-180~~], Central Registry Check" [~~Child's Health and Emergency Information~~], edition 12/07[~~11/03~~]; [~~and~~]

(c) "OIG-RCC-6 [~~DCC-179~~], Self Check List", edition 12/07; and (d) "OIG-RCC-7, Request for Appeal", edition 12/07 [~~11/03~~].

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

MARK CORNETT, Deputy Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: January 14, 2008

FILED WITH LRC: January 15, 2008 at 11 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, February 11, 2008)

922 KAR 2:110. Child-care center [~~Child care facility~~] provider requirements.

RELATES TO: KRS 17.165, 199.011(2), 199.894(3), 199.896(2), (10), (11), (15)-(20), 199.898, 214.010, 214.036, 314.011(5), 620.030, 45 C.F.R. 98.2

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers. This administrative regulation establishes standards for child day care facilities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally-appropriate play and learning activities.

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation.

(5) "**Health**[~~Heath~~] professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined **by**[~~in~~] KRS 314.011(5) under the supervision of a physician.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means an individual, partnership, corporation, or other entity authorized to operate a child-care center.

(8) "Parent" is defined **by**[~~in~~] 45 C.F.R. 98.2.

(9) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and a parent; or

(d) Other activity designed to engage a parent in the program's activities.

(10) "Premises" means the building and contiguous property in which child care is provided.

(11) "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(12) "School-age" means a child attending kindergarten, elementary, or secondary education.

(13) "Toddler" means a child between the age of twelve (12) **months** and twenty-four (24) months.

(14) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a **residential setting with** designated space separate from the primary residence of a licensee.

(15) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for **at least** seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center [~~child care facility~~] pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center [~~Child care facility~~] staff shall be:

(a) Instructed by the child-care center's [~~facility's~~] director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, [~~and~~] 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child **or the child's**[~~and the~~] parent [~~, his parent, or person exercising custodial control~~] shall be kept in strict confidence by child-care center [~~child care facility~~] staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center [~~facility~~].

(5) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:090, Child-care center [~~Child care facility~~] licensure; [~~and~~]

c. 922 KAR 2:120, Child-care center [~~Child care facility~~] health and safety standards; and

d. This administrative regulation.

(6) An activity of a person living in a child-care center [~~child care facility~~] that is a dwelling unit shall not interfere with the child-care center [~~day care~~] program.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center [~~child care facility~~] shall post the following in a conspicuous place and make[~~,~~] available for public inspection:

(a) Each statement of deficiency and civil monetary penalty notice issued by the cabinet during the current licensure year;

(b) Each plan of correction submitted by the child-care center [~~facility~~] to the cabinet during the current licensure year;

(c) A description of services provided by the child-care center [~~facility~~], including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care.

(d) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(e) Daily schedule.

[~~(8) The director of a child care facility shall be responsible for the following:~~

~~(a) Development of a child care program that meets the requirements of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120;~~

~~(b) Development of facility plans, policies and procedures;~~

~~(c) Supervision of staff conduct to ensure implementation of program policies and procedures at the facility;~~

~~(d) Scheduling of daily activities for the children;~~

~~(e) Conducting and managing staff meetings;~~

~~(f) Evaluating the instructional activity of each staff person;~~

~~(g) Assuring that additional staff are available during cooking and cleaning hours if necessary to maintain staff-to-child ratios pursuant to 922 KAR 2:120, Section 1;~~

~~(h) Providing for the health, safety and comfort of each child;~~

~~(i) Immediate notification of an accident or incident requiring medical treatment of a child to the:~~

~~1. Parent; or~~

~~2. Person exercising custodial control;~~

~~(j) Assurance that a new employee or new volunteer shall not be left alone with a child if the licensee has not received the results of the new employee or volunteer's:~~

~~1. Criminal records check conducted by the Justice and Public Safety Cabinet or Administrative Office of the Courts; and~~

~~2. Child abuse or neglect check conducted by the cabinet;~~

~~(k) Assurance that each mandatory record specified in Section 2 of this administrative regulation has not been altered or falsified; and~~

~~(l) Assuring that information and rights are posted in accordance with KRS 199.898.~~]

Section 3. [~~2.~~] Records. The following records shall be maintained at the child-care center [~~child care facility~~] for five (5) years:

(1) Sufficient records to:

(a) Identify each child enrolled in the child-care center; and [~~facility;~~]

(b) Enable the person in charge to contact each child's:

1. [~~Each child's~~] Parent [~~or person exercising custodial control~~] at:

a. Home; or

b. Place of employment; and

2. [~~The~~] Family physician; and

(c) Identify the name of each person designated in writing by the parent to pick up the child;

(2) Each child's medical history, along with authorization for emergency medical care, signed by the parent [~~or person exercising custodial control~~] and left with the child-care center [~~facility~~] director at the time of enrollment;

(3) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized pursuant to 902 KAR 2:060**, placed**[~~shall be~~] on file within thirty (30) days of enrollment;

(4) Permission forms for each trip off the premises signed by the parent [~~or person exercising custodial control~~];

(5) Daily attendance records documenting the arrival and departure time of each child;

(6) [~~For each staff person:~~

~~(a) A copy of the results of a negative tuberculin skin test prior to employment and every two (2) years thereafter; or~~

~~(b) A physician's statement prior to employment and every two (2) years thereafter documenting the individual is free from tuberculosis;~~

~~(7)~~] A written schedule of staff working hours;

(7) A [~~(8)~~] Written record of training participation for each child-care [~~child care~~] center staff person, to include:

(a)[~~, including~~] The training source;[~~,~~]

(b) Location;[~~,~~]

(c) Date;[~~,~~] and

(d) Number of clock hours completed [~~obtained~~];

(8)[~~(9)~~] A written annual plan for child-care staff professional development;

(9)[~~(10)~~] A written record of quarterly, practiced earthquake and tornado drills detailing the date, time, and children who participated;

(10)[~~(11)~~] A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated [~~in accordance with the Life Safety Code, incorporated by reference in 815 KAR 10:060~~];

(11)[~~(12)~~] A written plan and diagram outlining the course of action in the event of natural or manmade disaster, posted in a prominent place;

(12) For the director, employee, volunteer, or any person with supervisory or disciplinary control over, or having direct contact with a child,[~~(13)~~] results of the:

(a) Criminal records check in accordance with KRS 17.165;

(b) Child abuse and neglect check in accordance with 922 KAR 1:470; and

(c) Background check from:

1. Previous state of residence, if the individual has been a resident outside of Kentucky in the previous five (5) years; or

2. Current state of residence, if other than Kentucky [~~the and search by the cabinet for a substantiated incident of abuse or neglect of a child pursuant to KRS 199.896(19)~~]; and

(13)[~~(14)~~] A written record of reports to the cabinet required in Section 6(1)[~~4(1)~~] of this administrative regulation.

Section 4. Director Requirements and Responsibilities. [~~3. Staff Requirements.~~] (1) Effective with the adoption of this administrative regulation, a director shall [~~A director of a Type I facility providing child care shall~~]:

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

(b) Have a high school diploma, [~~or~~] a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center [~~day care facility~~] is in operation; and

(d) Ensure compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation;

(e) Manage the staff in their individual job descriptions;

(f) Develop child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities**, to include lists and dates of activities to be conducted with the children in each classroom**;

(i) Conduct, manage, and document in writing staff meetings;

(j) **Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation**[~~Evaluate in writing annually the instructional activity of each staff person~~];

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Provide for the health, safety, and comfort of each child;

(m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the:

1. Criminal records check required by KRS 199.896(19); and

2. Child abuse or neglect check in accordance with 922 KAR 1:470;

(o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and

(p) Coordinate at least one (1) annual activity involving parental or family participation.

(2) The director of a Type I child-care center shall [~~and (d)~~] meet one (1) of the following educational requirements:

(a)[~~1.~~] Master's degree in Early Childhood Education and Development;

(b)[~~2.~~] Bachelor's degree in Early Childhood Education and Development;

(c)[~~3.~~] Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d)[~~4.~~] Associate degree in Early Childhood Education and Development;

(e)[~~5.~~] Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in:

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child care program;

(g)[~~6.~~] Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1.[~~a.~~] A school-based program following Department of Education guidelines;

2.[~~b.~~] An early childhood development program (head start); or

3.[~~c.~~] A licensed or certified child-[~~day~~]care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or[~~:~~]

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training; [~~7. Diploma in Child Development Services from Kentucky Tech as a preschool teacher or director; or~~

~~8. Three (3) years of verifiable full-time paid experience working directly with children in:~~

~~a. A school-based program following Department of Education guidelines;~~

~~b. An early childhood development program, such as Head Start; or~~

~~c. A licensed or certified child day care program.~~

~~(2) A director of a Type II facility providing child care shall meet the requirements for a Type I facility, or shall:~~

~~(a) Be twenty-one (21) years of age;~~

~~(b) Have a high school diploma or GED;~~

~~(c) Have twelve (12) hours of orientation and child development training;~~

~~(d) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and~~

~~(e) Meet one (1) of the following educational requirements:~~

~~1. Certificate in child development services from Kentucky Tech or local school system, as a child care assistant;~~]

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An **early**[~~Early~~] childhood development program, such as Head Start; or

c. A licensed or certified child-[~~day~~]care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

[~~(3) A director of a licensed child care facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsections (1) and (2) of this section.~~]

Section 5. Staff Requirements. (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; **and**[~~.~~]

(b) Shall provide, prior to employment and every two years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis: or

2. A copy of the results of a negative tuberculin skin test.

(2) A child-care center [~~(4) The following staff requirements shall apply to a child care facility:~~

~~(a) Staff shall provide adequate supervision of each child in the care of the facility;~~

~~(b) A facility~~] shall not employ a person:

(a)[~~1.~~] Convicted of a crime **pursuant to**[~~as defined in~~] KRS 17.165(5); or

(b)[~~2.~~] Found by the cabinet to have abused or neglected a child, pursuant to 922 KAR 1:470. [~~KRS 199.896(19);~~]

(3)[~~(c)~~] At least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training **agency** [~~agency with standards and training material acceptable to, and on file with, the cabinet,~~] in the following skills:

(a)[~~1.~~]Infant and child cardiopulmonary resuscitation; and

(b)[~~2.~~] Infant and child first aid.[~~;~~]

(4)[~~(d)~~] Infant and child cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15)[~~twelve (12)~~] clock hours requirement in subsection (14)[~~(13)~~] of this section.[~~;~~]

(5)[~~(e)~~] One (1) adult staff person shall be designated as being in charge. If the director is not present in the child-care center[~~child care facility~~], the designated staff person in charge shall carry out the duties of the director[~~;~~

~~(f) Child care staff shall practice good personal hygiene; and~~

~~(g) Child care staff shall wash their hands with liquid soap and running water:~~

~~1. After diapering or toileting each child; and~~

~~2. Immediately before feeding each child~~].

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; **or**[~~and~~]

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7)[~~(5) In a type I facility, a minimum of two (2) qualified substitute staff persons shall be available in case of need. The licensee shall assure that:~~

~~(a)~~] Each qualified substitute staff person shall:

(a) Meet the [~~meets~~] staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation[~~Documentation required to verify a substitute's compliance with this administrative regulation is on file in the facility~~].

(8) A qualified substitute who[~~(6) If a qualified substitute~~] works in more than one (1) licensed child-care [~~child care~~] center [~~under different ownership, the substitute~~] shall provide the required

documentation to verify compliance with this administrative regulation [present to each facility] at the time of employment with each child-care center.

(9)[: (a) Proof that the individual is free of tuberculosis;

(b) Documentation that the individual has met the annual training requirement; and

(c) A copy of the results of the individual's:

1. Criminal records check, conducted within the past year; and

2. Child abuse or neglect check, conducted within the past year.

(7) In a type II facility:

(a) At least one (1) qualified substitute staff person shall be available in case of need; or

(b)] If the operator of a Type II child-care center [facility] is unable to provide care in accordance with this administrative regulation, 922 KAR 2:090, or 922 KAR 2:120, the Type II child-care center[facility] shall close temporarily until the operator is able to resume compliance;

(10)[(8)] The minimum number of adult workers in a child-care center[child care facility] shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed[Each child receive adequate supervision];

(b) Each staff person under eighteen (18) years of age and each student trainee are[is] under the direct supervision of a qualified[permanent] staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18)[sixteen (16)] shall not be counted as staff for the staff-to-child ratio.

(11)[(9)] Except for medication prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.

[(10) Smoking shall:

(a) Be permitted only in designated areas; and

(b) Not be permitted in the presence of a child.]

(12)[(11)] Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2[1](11)(f).

(13)[(12)] For each adult residing at a child-care center [child care facility that is the full-time residence of a licensee], the results of the following shall be maintained on file at the center[facility]:

(a) Criminal records check indicating that the adult has not been convicted of a crime **pursuant to**[as defined in] KRS 17.165(5);

(b) Child abuse and neglect checks in accordance with 922 KAR 1:470, [Search conducted by the cabinet] indicating that the adult has not been found by the cabinet to have abused or neglected a child; and

(c) A copy of the results of a negative tuberculosis skin test or a health professional's [physician's] statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide evidence of a negative tuberculosis skin or health professional's [physician's] statement documenting that the adult is free of tuberculosis.

(14)[(13)] A staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9)[Six (6)] hours cabinet-approved child development training within the first year of employment; and

(c) Fifteen (15)[Twelve (12)] hours of cabinet-approved [relevant] training during each subsequent year of employment.

Section 6.[4.] Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery[of]:

(a) Communicable disease**, which shall also be reported** to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care [or results in death];

(c) An incident that results in legal action by or against the child-care center [child care facility] that affects a child or staff person; **or**[and]

(d) An incident involving fire or other emergency.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee [change of director] shall report[be reported] to the cabinet within one (1) week:[.]

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership;

(b) Change of location;

(c) Increase in capacity;

(d) Change in hours of operation;

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Two (2) years to school-age;

4. School-age;

5. Nontraditional hours [Nighttime care]; or

6. Transportation; or

(f) Addition to the square footage a child-care center's premises [of a room, wing, or building to a facility's usable space].

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6)[(5)] The cabinet and parent of a child enrolled in a child-care center[child care facility] shall receive notice as soon as practicable and prior to a child care center's[child care facility's] temporary or permanent closure.

MARK WASHINGTON, Commissioner
TOM EMBERTON, JR, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 12, 2007

FILED WITH LRC: October 12, 2007 at 4 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, February 11, 2008)

922 KAR 2:120. Child-child care center[care facility] health and safety standards.

RELATES TO: KRS **Chapter 151, Chapter 186,** 199.894**(1),** 199.896(2), (18), (19), 199.898, 211.350-211.380, **Chapter 217, 227.220,** 314.011(5), 620.030[(1)], 16 C.F.R. 1508, 1509, 45 C.F.R. 98.2, 49 C.F.R. 571.213

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care [child care] centers. This administrative regulation establishes health and safety standards for child-care centers [day care facilities].

Section 1. Definitions. (1) "Adequate supervision" means that qualified staff devotes full-time attention to a child in care and ensures the child is within scope of vision and range of voice.

(2) "Cabinet" is defined by KRS 199.894**(1).**

(3) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:110, Section 4;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:110, and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(4) "Health professional" means a person currently licensed as a:
(a) Physician;
(b) Physician's assistant;
(c) Advanced registered nurse practitioner; or
(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.
(5) "Infant" means a child who is less than twelve (12) months of age.
(6) "Licensee" means an individual, partnership, corporation, or other entity authorized to operate a child-care center.
(7) "Nontraditional hours" means the hours of:
(a) 6 p.m. through 6 a.m., Monday through Friday; or
(b) 6 p.m. on Friday until 6 a.m. on Monday.
(8) "Parent" is defined in 45 C.F.R. 98.2.
(9) "Premises" means the building and contiguous property in which child care is provided.
(10) "Protective surface" means loose surfacing material not installed over concrete which includes the following:
(a) Wood mulch;
(b) Double shredded bark mulch;
(c) Uniform wood chips;
(d) Fine sand;
(e) Coarse sand;
(f) Pea gravel, except for areas used by children under three (3) years of age;
(g) Certified shock absorbing resilient material; or
(h) Other material approved by the cabinet or designee.
(11) "Related" means **having one (1) of the following relationships with the operator of the child care center:**
1. Child;
2. Grandchild;
3. Niece;
4. Nephew;
5. Sibling;
6. Stepchild; or
7. Child in legal custody of the operator.[~~grandchildren, nieces, nephews, or children in legal custody of the operator of the child-care center.~~]
(12) "School-age" means a child enrolled in kindergarten, elementary, or secondary education.
(13) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.
(14) "Type I child-care center" **means**[~~is~~] a child-care center licensed to regularly provide child care services for:
(a) Four (4) or more children in a nonresidential setting; or
(b) Thirteen (13) or more children in a **residential setting with** designated space separate from the primary residence of a licensee.
(15) "Type II child-care center" **means**[~~is~~] the primary residence of the licensee in which child care is regularly provided for **at least** seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.
(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20
3 to 4 years	1 staff for 12 children	24
4 to 5 years	1 staff for 14 children	28
5 to 7 years	1 staff for 15 children	30
7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

*Maximum Group Size **shall be**[~~is~~] applicable only to Type I centers.

(a) In a Type I center, a group **size** shall:
1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.
(b) The age of the youngest child in the group shall determine the:
1. Staff-to-child ratio; and
2. Maximum group size.
(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:
1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) **years** to six (6) years; and
2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.
(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.
(3)(a) Each center shall maintain a child care program that assures each child will be:
1. Provided adequate supervision at all times; and
2. Protected from abuse or neglect.
(b) The program shall include:
1. A procedure to inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect **set forth in**[~~, as required by~~] KRS 620.030; and
2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.
(4) The child-care center shall provide a daily planned program of activities:
(a) Posted in writing in a conspicuous location with each age group and followed;
(b) Geared to the individual needs and developmental levels of each child served;
(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being;
(d) That offers a variety of creative activities including the following:
1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building;
7. Tactile activity;
8. Culture;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity; [~~and~~]
11. An opportunity for a child to:
a. Have some free choice of activities;
b. If desired, play apart from the group at times; and
c. Practice developmentally-appropriate self-help procedures in respect to:
(i) Clothing;
(ii) Toileting;
(iii) Hand-washing; and
(iv) Eating; and
12. Use of electronic viewing and listening devices if the:
a. Material is appropriate to the child using the equipment;
b. Material does not include any violence, adult content viewing, or inappropriate language;
c. Viewing or listening is limited to two (2) hours per day;
d. Viewing or listening is discussed with parents prior to viewing or listening; and
e. Viewing or listening is designed as an educational tool.
(5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.

(8) A child shall not be required to stand or sit for a prolonged period of time:

(a) During an activity;

(b) While waiting for an activity to start; or

(c) As punishment.

(9) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I center; and

(b) Each child shall be provided a snack after school.

(10) A child shall not be subjected to:

(a) Corporal physical discipline pursuant to KRS 199.896(18);

(b) Loud, profane, threatening, frightening, or abusive language; or

(c) Discipline that is associated with:

1. Rest;

2. Toileting; or

3. Food.

(11) If nontraditional hours of care are provided:

(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity geared to the child's age level and developmental needs;

(d) A child sleeping three (3) hours or more shall sleep in:

1. Pajamas; or

2. A nightgown;

(e) If a child attends school from the child-care center, the child shall be offered breakfast; and

(f) Staff shall:

1. If employed by a Type I center, remain awake while on duty; or

2. If employed by or is the operator of a Type II center, remain awake until every child in care is asleep.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described Section 2(4)(d).

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness; and

(b) Wash **his or her**[~~their~~] hands with liquid soap and warm running water:

1. Upon arrival at the center;

2. Before and after eating or handling food;

3. After toileting or diaper change;

4. After handling animals;

5. After wiping or blowing nose;

6. After touching items soiled with body fluids or wastes; and

7. After outdoor or indoor play time.

(5) Staff shall:

(a) Maintain personal cleanliness;

(b) Conform to hygienic practices while on duty; and

(c) Wash their hands with liquid soap and running water:

1. Upon arrival at the center;

2. After toileting or assisting a child in toileting;

3. Before and after diapering each child;

4. After wiping or blowing a child's or own nose;

5. After handling animals;

6. After caring for a sick child;

7. Before and after feeding a child or eating;

8. Before dispensing medication; and

9. If possible, before administering first aid.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

(7) The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) Knives and sharp objects;

(c) Matches, cigarettes, lighters, and flammable liquids;

(d) Plastic bags;

(e) Litter and rubbish;

(f) Bar soap; and

(g) Personal belongings of staff.

(8) Guns and ammunition shall be stored separately in a locked area outside of the designated child care area.

(9) Smoking shall:

(a) Be permitted in accordance with local ordinances;

(b) Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(10) While bottle feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(11) Except for an infant, toddler, or a child who attends nontraditional hours of care, a child shall have rest periods not to exceed two (2) hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child.

(12) Staff in a child-care center shall follow the most current policy of the American Academy of Pediatrics**, located at http://www.aap.org/,** when placing a child to sleep.

Section 4. Premises Requirements. (1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with a land-line telephone accessible to a room used by a child.

(2) A child-care center shall be in compliance with the State Fire Marshal **requirements established in KRS 227.220** and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;

2. Adequately heated;

3. Ventilated; and

4. Well lit, including clean light fixtures:

a. That are in good repair in all areas; and

b. Shielded or have shattered proof bulbs installed; **and**

(b) Following are protected:

1. Windows;

2. Doors;

3. Stoves;

4. Heaters;

5. Furnaces;

6. Pipes; and

7. Stairs.

(5) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(6) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(7) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;
(d) Controlled air current; or
(e) Other effective means.
(8) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.
(9) The water supply shall be:
(a) Potable;
(b) Protected from contamination;
(c) Adequate in quality and volume;
(d) Under sufficient pressure to permit unrestricted use; and
(e) Obtained from an approved public water supply or a source approved by the local health department. [~~Properly located;~~
~~(b) Protected from contamination;~~
~~(c) Adequate in volume; and~~
~~(d) Obtained from a source approved by the local health department.~~]
(10) Groundwater supplies for a center caring for:
(a) More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection **Division of Water, established in KRS Chapter 151**; or
(b) Twenty-five (25) children or less shall secure approval from the:
1. Cabinet for Environmental and Public Protection; or
2. Local health department.
(11) Sewage shall be properly disposed by a method approved by the:
(a) Cabinet for Environmental and Public Protection; or
(b) Cabinet.
(12) All plumbing shall comply with the State Plumbing Code **established in KRS 211.3470.** [~~If the adequacy of the plumbing is questioned, consultation shall be sought from the:~~
~~(a) Cabinet for Environmental and Public Protection; or~~
~~(b) Local sanitarian having jurisdiction over the child-care center.~~]
(13) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.
(14) If a portion of the building is used for a purpose other than child care, necessary provisions shall be made to avoid interference with the child care program.
(15) The temperature of the inside area of the premises shall be:
(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or
(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.
(16) A kitchen shall not be required if:
(a) The only food served is an afternoon snack to school-age children; and
(b) Adequate refrigeration is maintained.
(17) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.
(18) An outdoor play area shall be:
(a) Except for an after-school child care program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;
(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (5) of this section;
(c) Free from:
1. Litter;
2. Glass;
3. Rubbish; and
4. Flammable materials;
(d) Safe from foreseeable hazard;
(e) Well drained;
(f) Well maintained;
(g) In good repair; and
(h) Visible to staff at all times.
(19) A protective surface shall:
(a) Be provided for outdoor play equipment used to:
1. Climb;
2. Swing; and
3. Slide; and
(b) Have a fall zone equal to the height of the equipment.
(20) If a child-care center does not have access to an outdoor play area, an indoor space shall:
(a) Be used as a play area;
(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (5) of this section;
(c) Include equipment for gross motor skills;
(d) Be well-ventilated;
(e) Be heated; and
(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.
(21) Fences shall be:
(a) Constructed of safe material;
(b) Stable; and
(c) In good condition.
(22) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
(23) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
(24) A sandbox shall be:
(a) Constructed to allow for drainage;
(b) Covered when not in use;
(c) Kept clean; and
(d) Checked for vermin prior to use.
(25) Bodies of water that shall not be utilized include:
(a) Portable wading pools;
(b) Natural bodies of water; and
(c) Unfiltered, nondisinfected containers.
(26) A child-care center shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.
(27) Storage space shall be provided:
(a) In the form of low open shelves accessible to the children; and
(b) In sufficient quantity for each child's clothing.
(28) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:
(a) Be separate from an area used by an older child;
(b) Not be an exit or entrance; and
(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.
(2) An infant or toddler may participate in an activity with an older child for no more than one (1) hour.
(3) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:
(a) Shaded; and
(b) A separate area or scheduled at a different time than an older child.

Section 6. Sleeping and Napping Equipment. (1) An individual cot, crib, baby bed, or two (2) inch thick waterproof mat shall be provided for a child in attendance for more than three and one-half (3 1/2) hours per day.
(2) A crib shall:
(a) Be equipped with a firm, comfortable waterproof mattress; and
(b) Meet the standards set forth in 16 C.F.R. 1508 and 1509.
(3) Individual sheets and covers shall be:
(a) Provided for a child;
(b) Laundered a minimum of once per week or more often, if necessary; and
(c) Stored in a sanitary manner.
(4) If cots or mats are used, floors shall be free from:
(a) Drafts;
(b) Liquid substances;
(c) Dirt; and
(d) Dampness.

(5) **Cots**[~~A cot~~], other equipment, and furnishings shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(6) A tiered crib shall not be used.

(7) Cots or mats not labeled for individual use by a child shall be sanitized after each use.

(8) Cots or mats shall not be ripped or torn.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies are current;

(d) If reusable, be:

1. Sanitized; and

2. Maintained in a sanitary manner; and

(e) Include:

1. Liquid soap;

2. Adhesive bandages;

3. Sterile gauze;

4. Medical tape;

5. Scissors;

6. A thermometer;

7. Flashlight;

8. Cold pack;

9. First aid book;

10. Disposable gloves; and

11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child care program.

(3) If a child becomes ill while at the center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent[~~or person exercising custodial control~~] shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription medication shall not be administered to a child in care, without a daily written request of the parent.

(5) Nonprescription medication:

(a) May be given to a child only with the written daily request of the:

1. Parent; or

2. Person exercising custodial control of the child; and

(b) Shall be administered according to the instructions on the label.

(6) The child-care center shall keep a written record of the administration of medication, including:

(a) Time;

(b) Date;

(c) Amount; and

(d) Name of staff person giving the medication.

(7) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child;

(b) Kept in the original bottle; and

(c) Properly labeled.

(8) Medication shall not be given to a child if the expiration date on the bottle has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for the proper:

1. Preservation;

2. Storage;

3. Preparation; and

4. Serving of food;

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II center when a meal is not being prepared, not be used for the activity of a child.

(2) A center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) A child shall be:

(a) Seated with sufficient room to manage food and tableware; and

(b) Supplied with individual eating utensils designed for use by a child.

(4) Convenient and suitable sanitized utensils shall be:

(a) Provided; and

(b) Used to minimize handling of food during preparation.

(5) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above.

(6) Except when being thawed for preparation or use, frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below; and

(b) If potentially hazardous:

1. Thawed at refrigerator temperatures;

2. Thawed under cool, potable running water;

3. Quick thawed as part of the cooking process; or

4. Thawed by another method **in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217**[~~satisfactory to the health authority~~].

(7) Equipment, utensils, and surfaces contacting food shall be:

(a) Smooth;

(b) Free of breaks, open seams, cracks, and chips;

(c) Accessible for cleaning; and

(d) Nontoxic.

(8) The following shall be clean and sanitary:

(a) Eating and drinking utensils;

(b) Kitchenware;

(c) Food contact surfaces of equipment;

(d) Food storage utensils;

(e) Cooking surfaces of equipment; and

(f) Nonfood contact surfaces of equipment.

(9) A single-service article shall be:

(a) Stored;

(b) Handled and dispensed in a sanitary manner; and

(c) Used only once.

(10) Bottles shall be:

(a) Individually labeled;

(b) Promptly refrigerated; and

(c) Covered when not in use.

Section 9. Food Requirements. (1) There shall be at least a two (2) hour lapse, but no longer than three (3) hours lapse, between each meal or snack.

(2) A child present at meal or snack time shall be served.

(3) The child-care center shall serve:

(a)1. Breakfast; or

2. A mid-morning snack;

(b) Lunch;

(c) A mid-afternoon snack; and

(d) If appropriate, dinner.

(4) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Posted in advance in a conspicuous place;

(d) Kept on file for thirty (30) days; and

(e) Substitutions to a posted weekly menu shall be noted on the day the meal is served.

(5) Breakfast shall include:

(a) Milk;

(b) Bread; and

(c)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(6) A snack shall include two (2) of the following:
(a) Milk;
(b) Protein;
(c) Bread; or
(d)1. Fruit;
2. Vegetable; or
3. 100 percent juice.
(7) Lunch and dinner shall include:
(a) Milk;
(b) Protein;
(c) Bread; and
(d)1. Two (2) vegetables; or
2. A fruit and one (1) vegetable.
(8) Food shall be:
(a) Clean;
(b) Free from:
1. Spoilage;
2. Adulteration; and
3. Misbranding;
(c) Safe for human consumption;
(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
(e) Obtained from a source that is in compliance with **the Department of Public Health's food safety standards and permits, established in KRS Chapter 217**[~~applicable state and local law~~];
(f) Acceptable if from an established commercial food store;
(g) Served in a quantity reflecting the developmental stage of the child with additional portions provided upon request of the child; and
(h) Protected against contamination from:
1. Dust;
2. Flies;
3. Rodents and other vermin;
4. Unclean utensils and work surfaces;
5. Unnecessary handling;
6. Coughs and sneezes;
7. Flooding;
8. Drainage; and
9. Overhead leakage.
(9) Food shall be stored on:
(a) Clean racks;
(b) Clean shelves;
(c) Other clean surfaces; or
(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.
(10) Fruits and vegetables shall be washed before cooking or serving.
(11) Meat salads, poultry salads, and cream filled pastries shall be:
(a) Prepared with utensils that are clean; and
(b) Unless served immediately, refrigerated pending service.
(12) An individual portion of food served to a child or adult shall not be served again.
(13) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
(14) Drinking water shall be freely available to a child.
(15) A center may participate in the Child and Adult Care Food Program (CACFP) or provide formula to the child.
(16) A parent who provides formula or breast milk to the center for the child shall prepare the liquid and label its container.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.
(2) A toilet room shall:
(a)1. Be provided for each gender; or
2. A plan shall be implemented to use the same toilet room at separate times;
(b) Have a supply of toilet paper; and
(c) Be cleaned and sanitized daily.
(3) A sink shall be:
(a) Located in or immediately adjacent to toilet rooms;
(b) Equipped with hot and cold running water that allows for hand washing;
(c) Equipped with hot water no more than 110 degrees Fahrenheit;
(d) Equipped with liquid soap and single use disposable hand drying material;
(e) Equipped with an easily cleanable, covered waste receptacle; and
(f) Immediately adjacent to a changing area used for infants and toddlers.
(4) Each toilet shall:
(a) Be kept in clean condition;
(b) Be kept in good repair;
(c) Be in a lighted room; and
(d) Have ventilation to outside air.
(5) Toilet training shall be coordinated with the child's parent.
(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
(7) If a toilet training chair is used, the chair shall be:
(a) Emptied promptly; and
(b) Sanitized after each use.
(8) Diapers or clothing shall be:
(a) Changed when soiled or wet;
(b) Stored in a covered container temporarily; and
(c) Washed or disposed of at least once a day.
(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
(10) When a child is diapered, the child shall:
(a) Not be left unattended; and
(b) Be placed on a surface that is:
1. Clean;
2. Padded;
3. Free of holes, rips, tears, or other damage;
4. Nonabsorbent;
5. Easily cleaned; and
6. Free of any items not used for diaper changing.
(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
(12) Staff shall disinfect the diapering surface after each child is diapered. disposed after each child is diapered.
(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
(a) Individually stored in separate containers; and
(b) Plainly labeled with the child's name.
(15) Toothbrushes shall be:
(a) Individually identified;
(b) Allowed to air dry; and
(c) Protected from contamination.
(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface such as waxed paper to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys, equipment, and furniture contacted by a child shall be:
(a) Kept clean and in good repair and
(b) Free of peeling, flaking, or chalking paint.
(2) Indoor and outdoor equipment shall:
(a) Be clean, safe, and in good repair;
(b) Meet the physical, developmental needs, and interests of children of different age groups;
(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
(d) Be designed to guard against entrapment or situations that may cause strangulation.
(3) Toys shall be:
(a) Used according to the manufacturer's safety specifications;
(b) Durable; and
(c) Without sharp points or edges.
(4) Toys and other items that are considered mouth contact surfaces by a child not toilet trained shall be sanitized daily by:

(a) Scrubbing in warm, soapy water using a brush to reach into crevices;
(b) Rinsing in clean water;
(c) Submerging in a sanitizing solution for at least two (2) minutes; and
(d) Air dried.
(5) Tables and chairs shall be of suitable size for children.
(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document **compliance with KRS Chapter 186 and 603 KAR 5:072**[~~conformance to federal and state law~~] pertaining to:
(a) Vehicles;
(b) Drivers; and
(c) Insurance.
(2) A center providing or arranging transportation service shall:
(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
(b) Have a written plan **that details the type of transportation, staff schedule, transportation schedule, and transportation route**; and
(c) Have written policies and procedures, including emergency procedures practiced monthly by staff that transport children.
(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
(a) Type of transportation offered;
(b) Type of vehicle used for transportation;
(c) Plan for ensuring staff perform duties relating to transportation properly;
(d) Full insurance coverage for each vehicle;
(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;
(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
(g) Safety procedures for:
1. Transporting a child;
2. Loading and unloading a child; and
3. Providing adequate supervision of a child.
(4) A vehicle used to transport children shall be equipped with:
(a) A fire extinguisher;
(b) First aid supplies as described in Section 7 of this administrative regulation;
(c) Emergency reflective triangles; and
(d) A device to cut the restraint system, if necessary.
(5) Transportation provided by licensed public transportation or a school bus shall **comply**[~~:~~
~~(a) Meet Transportation Cabinet safety inspection requirements; and~~
~~(b) Comply~~] with subsections (1) and (2) of this section.
(6) A vehicle used to transport children shall meet the following requirements:
(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.
(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:
1. Signal lamps;
2. Identifying colors; and
3. Cautionary words.
(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.
(d) A vehicle shall not transport children and hazardous materials at the same time.
(7) The appropriate car safety seat meeting federal motor vehicle safety standards in 49 C.F.R. 571.213 shall be used for each child.
(8) A daily inspection of the vehicle shall be performed and documented for the following:
(a) Tires;
(b) Lights, signals, mirrors, gauges, and wiper blades;
(c) Safety restraints;
(d) Fuel; and
(e) Free of debris.
(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.
(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).
(10) Each child shall:
(a) Have a seat;
(b) Be individually belted or harnessed in the seat; and
(c) Remain seated while the vehicle is in motion.
(11) A child shall not be left:
(a) Unattended at the site of aftercare delivery; and
(b) Unattended in a vehicle.
(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.
(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.
(14) A vehicle transporting a child shall have the headlamps on.
(15) A vehicle shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.
(16) If the driver is not in the driver's seat, the:
(a) Engine shall be turned off;
(b) Keys **shall be** removed; and
(c) Emergency brake **shall be** set.
(17) Transportation services provided shall:
(a) Be recorded in writing and include:
1. The first and last name of the child transported; and
2. The time each child gets on and the time each child gets off;
(b) Be completed by a staff member other than the driver; and
(c) Be kept for five (5) years.
(18) A driver of a vehicle transporting a child for a center shall:
(a) Be at least twenty one (21) years old;
(b) Complete the background checks as described in 922 KAR 2:110;
(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years;
(d) Not have had any convictions concerning vehicle operation in the past twelve (12) months; and
(e) Not caused an accident which resulted in the death of a person.
(19) Guns, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

Section **13.** [~~12.~~] Animals. (1) Animals shall be:
(a) Supervised by an adult **if**[~~when~~] in the presence of a child in care; and
(b) Certified as properly vaccinated [~~inoculated~~] against rabies.
(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.
(3) Except **if**[~~when~~] used as planned program activity in the control of an animal specialist, an animal that is considered **undomesticated,** wild, or exotic shall not be allowed at a child-care center. [~~Child Care Services. (1) Minimum staff-to-child ratios and group size for an operating child care facility shall be maintained as follows:~~

~~Age of Children~~	~~Ratio~~	~~Maximum Group Size*~~
~~Birth - 1 year~~	~~1 staff for 5 children~~	~~10~~
~~1 to 2 years~~	~~1 staff for 6 children~~	~~12~~
~~2 to 3 years~~	~~1 staff for 10 children~~	~~20~~
~~3 to 4 years~~	~~1 staff for 12 children~~	~~24~~
~~4 to 5 years~~	~~1 staff for 14 children~~	~~28~~
~~5 to 7 years~~	~~1 staff for 15 children~~	~~30~~
~~7 and older~~	~~1 staff for 25 children (for before and after school)~~	~~30~~

	~~1 staff for 20 children (for full day of care)~~	~~30~~

~~*Maximum Group Size is applicable only to Type I facilities.~~
~~(a) In a Type I facility, a group shall:~~
~~1. Be separately maintained in a defined area unique to the group; and~~
~~2. Have specific staff assigned to and responsible for the group.~~
~~(b) The age of the youngest child in the group shall determine the:~~
~~1. Staff-to-child ratio; and~~
~~2. Maximum group size.~~
~~(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a facility:~~
~~1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) to six (6) years; and~~
~~2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.~~
~~(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the facility, the child shall be included in the staff-to-child ratio.~~
~~(2) Each facility shall maintain a child care program that assures each child will be:~~
~~(a) Adequately supervised; and~~
~~(b) Protected from abuse or neglect. The program shall include:~~
~~1. A procedure to inform facility staff of the laws of the Commonwealth pertaining to child abuse or neglect, as required by KRS 620.030; and~~
~~2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child care facility staff member.~~
~~3) The facility shall provide a planned program of activities:~~
~~(a) Geared to the individual needs and developmental levels of each child served;~~
~~(b) That provide experiences to promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and shall provide a variety of creative activities, that may include the following:~~
~~1. Art;~~
~~2. Music;~~
~~3. Dramatic play;~~
~~4. Stories and books;~~
~~5. Science;~~
~~6. Block building;~~
~~7. Tactile activity;~~
~~8. Indoor or outdoor play in which a child makes use of both small and large muscles;~~
~~9. A balance of active and quiet play, including group and individual activity; and~~
~~10. An opportunity for a child to:~~
~~a. Have some free choice of activities;~~
~~b. If desired, play apart from the group at times; and~~
~~c. Practice developmentally-appropriate self-help procedures in respect to:~~
~~(i) Clothing;~~
~~(ii) Toileting;~~
~~(iii) Hand washing; and~~
~~(iv) Eating.~~
~~(4) Activity areas, equipment, and materials shall be arranged so that the child's activity is visible to the supervising staff.~~
~~(5) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.~~
~~(6) Sufficient time shall be allowed for an activity so that a child may progress at his own developmental rate.~~
~~(7) A child shall not be required to stand or sit for a prolonged period of time:~~
~~(a) During an activity;~~
~~(b) While waiting for an activity to start; or~~
~~(c) As punishment.~~
~~(8) Television or video viewing by a child shall be limited to program related areas.~~
~~(9) If school-age care is provided:~~
~~(a) A Separate area or room shall be provided in a Type I facility;~~
~~(b) Each child shall be provided a snack after school; and~~
~~(c) A separate toilet facility shall be provided for each gender; or~~
~~(d) A plan shall be implemented to use the same toilet facility at separate times.~~
~~(10) A child shall not be subjected to:~~
~~(a) Corporal physical discipline, as prohibited by KRS 199.896(18);~~
~~(b) Loud, profane, threatening, frightening, or abusive language; or~~
~~(c) Discipline that is associated with:~~
~~1. Rest;~~
~~2. Toileting; or~~
~~3. Food.~~
~~(11) If nighttime care is provided:~~
~~(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period. Time spent in school shall be included in the sixteen (16) hour limit for a school-age child served by the child care facility;~~
~~(b) At least one (1) staff member:~~
~~1. Shall be assigned responsibility; and~~
~~2. Provide adequate supervision for each sleeping room;~~
~~(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity geared to the child's age level and developmental needs;~~
~~(d) A child sleeping three (3) hours or more shall sleep in:~~
~~1. Pajamas; or~~
~~2. A nightgown;~~
~~(e) If a child attends school from the facility, the child shall be offered breakfast;~~
~~(f) Staff shall:~~
~~1. If employed by a Type I facility, remain awake while on duty; or~~
~~2. If employed by or is the operator of a Type II facility, remain awake until every child in care is asleep.~~
~~Section 2. Health and First Aid. The needs of a child shall be met as follows:~~
~~(1) First aid supplies shall:~~
~~(a) Be available to provide prompt and proper first aid treatment;~~
~~(b) Be stored out of reach of a child;~~
~~(c) Be periodically inventoried to ensure the supplies are current;~~
~~(d) If reusable, be:~~
~~1. Sanitized; and~~
~~2. Maintained in a sanitary manner;~~
~~(e) Include:~~
~~1. Liquid soap;~~
~~2. Adhesive bandages;~~
~~3. Sterile gauze;~~
~~4. Medical tape;~~
~~5. Scissors;~~
~~6. A thermometer;~~
~~7. Flashlight;~~
~~8. Cold pack;~~
~~9. First aid book;~~
~~10. Disposable gloves; and~~
~~11. A cardiopulmonary resuscitation mouthpiece protector.~~
~~(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child care program. If a child becomes ill during the day:~~
~~(a) The child shall be placed in a supervised area isolated from the rest of the children;~~
~~(b) The parent or person exercising custodial control shall be contacted immediately; and~~
~~(c) Arrangements shall be made to remove the child from the child care facility as soon as practicable.~~
~~(3) Except as authorized in writing by a licensed physician and with written daily request of the parent or person exercising custodial control, prescription medication or aspirin shall not be given to a child.~~
~~(4) Nonprescription medication:~~
~~(a) May be given to a child only with the written daily request of the:~~
~~1. Parent; or~~
~~2. Person exercising custodial control of the child;~~
~~(b) Shall be administered according to the instructions on the label.~~
~~(5) The child care facility shall keep a written record of the administration of medication, including:~~
~~(a) Time;~~
~~(b) Date;~~

~~(c) Amount; and~~
~~(d) Name of staff person giving the medication.~~
~~(6) Medication, including refrigerated medication, shall be:~~
~~(a) Stored in a separate, locked place, out of the reach of a child;~~
~~(b) Kept in the original bottle; and~~
~~(c) Properly labeled.~~
~~(7) Medication shall not be given to a child if the expiration date on the bottle has passed.~~
~~(8) A child shall be helped with personal care and cleanliness.~~
~~(9) A child shall wash his hands with liquid soap and running water:~~
~~(a) Before eating or handling food; and~~
~~(b) After toileting.~~
~~(10) Staff shall insure that diapering and toilet training is a relaxed, pleasant activity. Toilet training shall be coordinated with a parent or person exercising custodial control of the child.~~
~~(11) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.~~
~~(12) Soiled diapers or wet clothing shall be:~~
~~(a) Changed promptly;~~
~~(b) Stored in a covered container temporarily; and~~
~~(c) Washed or disposed of at least once a day.~~
~~(13) When a child is diapered:~~
~~(a) The child shall be placed on:~~
~~1. A clean washable surface; or~~
~~2. Surface with a disposable covering;~~
~~(b) Individual sanitized washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks, unless otherwise proscribed by a physician;~~
~~(c) Staff shall disinfect the surface after each child is diapered;~~
~~(d) If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered; and~~
~~(e) Staff shall wash their hands with liquid soap and running water after diapering each child.~~
~~(14) If a training chair is used, the chair shall be:~~
~~(a) Emptied promptly; and~~
~~(b) Sanitized after each use.~~
~~(15) An infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that:~~
~~(a) Participates in the Child and Adult Care Food Program (CACFP); or~~
~~(b) Provides formula as a fringe benefit to the parent.~~
~~(16) Bottles shall be:~~
~~(a) Individually labeled;~~
~~(b) Promptly refrigerated; and~~
~~(c) Covered when not in use.~~
~~(17) A child shall not be fed with a propped bottle.~~
~~(18) Except for an infant or toddler or if the child attends nighttime or extended-hours care, a child shall have rest periods not to exceed two (2) hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child.~~
~~(19) Drinking water shall be freely available to a child and an individual drinking cup shall be provided.~~
~~(20) Toilet articles like combs, towels or washcloths, brushes and toothbrushes used by a child shall be individual, stored so as to not touch each other, and plainly marked.~~
~~(21) A child present at meal or snack time shall be served.~~
~~(22) The child care facility shall serve:~~
~~(a) Breakfast; or~~
~~(b) A midmorning snack;~~
~~(c) Lunch; and~~
~~(d) A midafternoon snack; and~~
~~(e) If appropriate, dinner.~~
~~(23) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between each meal or snack.~~
~~(24) Food shall be served in a quantity reflecting the developmental stage of the child. Additional portions shall be provided upon request by the child.~~
~~(25) Food requirements shall be as follows:~~
~~(a) Breakfast shall include:~~
~~1. Milk;~~
~~2. Bread; and~~
~~3. Fruit; or~~
~~4. Vegetable; or~~
~~5. 100 percent juice.~~
~~(b) A snack shall include two (2) of the following:~~
~~1. Milk;~~
~~2. Protein;~~
~~3. Fruit or vegetable or 100 percent juice; or~~
~~4. Bread.~~
~~(c) Lunch and dinner shall include:~~
~~1. Milk;~~
~~2. Protein;~~
~~3. Two (2) vegetables or a fruit and one (1) vegetable; and~~
~~4. Bread.~~
~~(26) If a parent chooses to provide food for his child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed in subsection (25) of this section, the facility shall provide additional food that is approved by the parent or person exercising custodial control and necessary to meet the requirements of subsection (25) of this section.~~
~~(27) During each meal:~~
~~(a) A child shall be seated with sufficient room to manage food and tableware; and~~
~~(b) An adult shall be present.~~
~~(28) Individual eating utensils shall be of size or designed for use by a child.~~
~~(29) A weekly menu shall be:~~
~~(a) Prepared;~~
~~(b) Dated;~~
~~(c) Posted in advance in a conspicuous place;~~
~~(d) Kept on file for thirty (30) days; and~~
~~(e) If a substitution is made, the change shall be noted on the menu the day of the meal service.~~
~~Section 3. Health and Sanitation. If a facility is required to have a food service permit, the facility shall be in compliance with 902 KAR 45:005, Food service code, and this section.~~
~~(1) A facility that serves a meal shall have:~~
~~(a) A three (3) compartment sink or similar equipment; and~~
~~(b) Procedures approved by the cabinet for washing and sanitizing dishes, silverware and cooking utensils after use.~~
~~(2) Food shall be:~~
~~(a) Clean;~~
~~(b) Free from:~~
~~1. Spoilage;~~
~~2. Adulteration; and~~
~~3. Misbranding;~~
~~(c) Safe for human consumption;~~
~~(d) Withheld from service or discarded, if the food is hermetically sealed, nonacidic or low-acidic food that has been processed in a place other than a commercial food-processing establishment;~~
~~(e) Obtained from a source that is in compliance with applicable state and local law;~~
~~(f) Acceptable if from an established commercial food store;~~
~~(g) Protected against contamination from:~~
~~1. Dust;~~
~~2. Flies;~~
~~3. Rodents and other vermin;~~
~~4. Unclean utensils and work surfaces;~~
~~5. Unnecessary handling;~~
~~6. Coughs and sneezes;~~
~~7. Flooding;~~
~~8. Drainage; and~~
~~9. Overhead leakage.~~
~~(3) Except when being prepared and served, potentially hazardous food shall be:~~
~~(a) Kept in a safe environment for preservation;~~
~~(b) Forty-five (45) degrees Fahrenheit or below; or~~
~~(c) 140 degrees Fahrenheit or above.~~
~~(4) Except when being thawed for preparation or use, frozen food shall be:~~
~~(a) Kept at a temperature of zero degrees Fahrenheit or below;~~
~~(b) If potentially hazardous:~~
~~1. Thawed at refrigerator temperatures;~~
~~2. Thawed under cool, potable running water;~~
~~3. Quick thawed as part of the cooking process; or~~
~~4. Thawed by another method satisfactory to the health authority.~~

~~(5) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:~~
~~(a) Have an indicating thermometer; or~~
~~(b) Other appropriate temperature measuring device.~~
~~(6) Convenient and suitable sanitized utensils shall be:~~
~~(a) Provided; and~~
~~(b) Used to minimize handling of food during preparation.~~
~~(7) Poultry, pork and their products that have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked.~~
~~(8) Fruits and vegetables shall be washed before cooking or serving.~~
~~(9) Meat salads, poultry salads, and cream filled pastries shall be:~~
~~(a) Prepared with utensils that are clean; and~~
~~(b) Unless served immediately, refrigerated pending service.~~
~~(10) Food shall be stored in:~~
~~(a) Clean racks;~~
~~(b) Shelves;~~
~~(c) Other clean surfaces; or~~
~~(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.~~
~~(11) An individual portion of food served to a child shall not be served again.~~
~~(12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.~~
~~(13) The following shall be inaccessible to a child in care:~~
~~(a) Toxic cleaning supplies, poisons, and insecticides;~~
~~(b) Knives and sharp objects;~~
~~(c) Matches, cigarettes, lighters and flammable liquids;~~
~~(d) Plastic bags;~~
~~(e) Litter and rubbish; and~~
~~(f) Guns and ammunition, which shall be stored in a locked area.~~
~~(14) Health and disease controls shall be in place as follows:~~
~~(a) If a person is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until the infectious condition can no longer be reasonably expected to be transmitted. Disagreement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.~~
~~(b) An employee shall:~~
~~1. Maintain personal cleanliness;~~
~~2. Conform to hygienic practices while on duty;~~
~~3. Wash hands in running water with liquid soap:~~
~~a. Thoroughly before starting work;~~
~~b. As often as may be necessary to remove soil and contamination; and~~
~~4. Not resume work after toileting without first washing his hands.~~
~~(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.~~
~~(d) Food contact surfaces of equipment and utensils used in a facility shall be:~~
~~1. Smooth;~~
~~2. Free of:~~
~~a. Breaks;~~
~~b. Open seams;~~
~~c. Cracks; or~~
~~d. Chips;~~
~~3. Accessible for cleaning; and~~
~~4. Nontoxic.~~
~~(e) The following shall be clean and sanitary:~~
~~1. Eating and drinking utensils;~~
~~2. Kitchenware;~~
~~3. Food contact surfaces of equipment;~~
~~4. Food storage utensils;~~
~~5. Cooking surfaces of equipment; and~~
~~6. Nonfood contact surfaces of equipment.~~
~~(f) A single-service article shall be:~~
~~1. Stored;~~
~~2. Handled and dispensed in a sanitary manner; and~~
~~3. Used only once.~~
~~(g) An effective control measure shall be utilized to minimize the presence on the premises of:~~
~~1. Rodents;~~
~~2. Flies;~~
~~3. Roaches; and~~
~~4. Other vermin.~~
~~(h) An opening to the outer air shall be effectively protected against the entrance of insects by:~~
~~1. Self-closing doors;~~
~~2. Closed windows;~~
~~3. Screening;~~
~~4. Controlled air current; or~~
~~5. Other effective means.~~
~~(i) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.~~
~~(j) A kitchen shall be adequately ventilated to the outside air.~~
~~(k) The water supply shall be:~~
~~1. Properly located;~~
~~2. Protected from contamination;~~
~~3. Adequate in volume; and~~
~~4. Obtained from a source approved by the local health department.~~
~~(l) Groundwater supplies for a facility caring for:~~
~~1. More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection; or~~
~~2. Twenty-five (25) children or less shall secure approval from the:~~
~~a. Cabinet for Environmental and Public Protection; or~~
~~b. Local health department.~~
~~(m) Sewage shall be properly disposed of by a method approved by the:~~
~~1. Cabinet for Environmental and Public Protection; or~~
~~2. Cabinet.~~
~~(n) If the adequacy of the plumbing is questioned, consultation shall be sought from the:~~
~~1. Cabinet for Environmental and Public Protection; or~~
~~2. Local sanitarian having jurisdiction over the child care facility.~~
~~(o) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380, On-site disposal.~~
~~(p) A child care facility shall have adequate and conveniently located toilet and handwashing accommodations.~~
~~(q) Each toilet shall:~~
~~1. Be kept in clean condition;~~
~~2. Be kept in good repair;~~
~~3. Be in a lighted room; and~~
~~4. Have ventilation to outside air.~~
~~(r) A supply of toilet paper shall be available.~~
~~(s) Each lavatory shall have hot and cold running water, under pressure, that allows washing of hands under warm water.~~
~~(t) Water temperature at a lavatory used for hand washing shall not exceed 110 degrees Fahrenheit.~~
~~(u) Liquid soap and a sanitized individual cloth or paper towels shall be provided at each lavatory.~~
~~(v) An easily cleanable, covered waste receptacle shall be available in each toilet and handwashing area.~~
~~Section 4. Transportation. (1) Documentation shall be available to indicate conformance to federal and state law pertaining to:~~
~~(a) Vehicles;~~
~~(b) Drivers; and~~
~~(c) Insurance.~~
~~(2) A facility providing or arranging transportation service shall have a:~~
~~(a) Written plan; and~~
~~(b) Statement of transportation policies and procedures.~~
~~(3) Transportation provided by licensed public transportation or a school bus shall:~~
~~(a) Meet Transportation Cabinet safety inspection requirements; and~~
~~(b) Comply with subsections (1) and (2) of this section.~~
~~(4) The following are requirements for a facility-owned vehicle and its usage:~~
~~(a) A twelve (12) or more passenger van or bus shall display a current certification of inspection from the Transportation Cabinet on the designated window.~~
~~(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:~~
~~1. Signal lamps;~~

~~2. Identifying colors; and~~
~~3. Cautionary words.~~
~~(c) A car or van shall be equipped with seat belts for each occupant to be individually secured.~~
~~(d) A vehicle shall not transport children and hazardous materials at the same time.~~
~~(5)(a) The staff-to-child ratios set forth in Section 1(1) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.~~
~~(b) A lone driver shall supervise no more than four (4) children under the age of five (5).~~
~~(6) Each child shall:~~
~~(a) Have a seat;~~
~~(b) Be individually belted or harnessed in the seat; and~~
~~(c) Remain seated while the vehicle is in motion.~~
~~(7) A child under forty (40) inches in height shall be transported in an approved safety seat.~~
~~(8) A vehicle containing a child shall not be left unattended.~~
~~(9) A child shall not be left unattended at the site of aftercare delivery.~~
~~(10) If the parent or a person designated by the parent to accept the child is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.~~
~~(11) If a person other than the person ordinarily designated to receive the child is named as a substitute, the arrangements shall be:~~
~~(a) Made by the parent or person exercising custodial control of the child; and~~
~~(b) Documented at the time the arrangement is made.~~
~~(12) A child shall not be picked up at or delivered to a location that requires crossing the street or highway unless accompanied by an adult.~~
~~(13) A vehicle transporting a child shall have the headlamps on.~~
~~(14) A vehicle shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, a child shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.~~
~~(15) If the driver is not in the driver's seat, the:~~
~~(a) Engine shall be turned off;~~
~~(b) Keys removed; and~~
~~(c) Brake set.~~
~~Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.~~
~~(2) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child used for play. The entire child care facility shall be kept clean and in good repair.~~
~~(3) If a portion of the building is used for a purpose other than day care, necessary provisions shall be made to avoid interference with the day care program.~~
~~(4) The building shall be constructed:~~
~~(a) So that the building is:~~
~~1. Dry;~~
~~2. Adequately heated;~~
~~3. Ventilated; and~~
~~4. Lighted;~~
~~(b) To ensure the following are protected:~~
~~1. Windows;~~
~~2. Doors;~~
~~3. Stoves;~~
~~4. Heaters;~~
~~5. Furnaces;~~
~~6. Pipes; and~~
~~7. Stairs.~~
~~(5) An open window or door shall have a screen.~~
~~(6) A draft-free temperature of sixty-five (65) to seventy-five (75) degrees Fahrenheit shall be maintained in an occupied area during winter conditions. A draft-free temperature of sixty-eight (68) to eighty-two (82) degrees Fahrenheit shall be maintained in an occupied area during summer conditions.~~
~~(7) A facility shall have a minimum of one (1) toilet and one (1) wash basin for each twenty (20) children. In a boy's bathroom, urinals may be substituted for up to one-half (1/2) of the number of toilets required. A toilet facility shall be cleaned and sanitized daily.~~
~~(8) The kitchen shall:~~
~~(a) Be clean; and~~
~~(b) Be equipped for the proper:~~
~~1. Preservation;~~
~~2. Storage;~~
~~3. Preparation; and~~
~~4. Serving of food;~~
~~(c) Except in a Type II facility when a meal is not being prepared, not be used for the activity of a child.~~
~~(9) The child care facility shall be equipped with a telephone accessible to a room used by a child.~~
~~(10) A kitchen shall not be required if:~~
~~(a) The only food served is an afternoon snack to school-age children; and~~
~~(b) Adequate refrigeration is maintained.~~
~~(11) An indoor area for infants and toddlers shall be separate from an area used by older children. The infants and toddlers may participate in activities with older children for a short period of time.~~
~~(12) A facility shall have adequate crawling space for infants and toddlers that is:~~
~~(a) Protected from older children; and~~
~~(b) Away from general traffic patterns of the facility.~~
~~(13) A facility shall have a lavatory in or immediately adjacent to a changing area used for infants and toddlers.~~
~~(14) If a child care facility provides an outdoor play area for infants and toddlers, the outdoor area shall be:~~
~~(a) Shaded; and~~
~~(b) Out of the traffic pattern of older children.~~
~~(15) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.~~
~~(16) Outdoor grounds shall be provided as follows:~~
~~(a) An on-site outdoor play area shall be:~~
~~1. Except for an after-school child care program located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;~~
~~2. A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (2) of this section;~~
~~3. Free from:~~
~~a. Litter;~~
~~b. Glass;~~
~~c. Rubbish; and~~
~~d. Flammable materials;~~
~~4. Safe from foreseeable hazard and well drained;~~
~~(b) If a child care facility does not have access to an outdoor play area, an indoor space shall:~~
~~1. Be used as a play area;~~
~~2. Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (2) of this section;~~
~~3. Include gross motor equipment; and~~
~~4. Be well-ventilated and heated.~~
~~(17) Equipment shall be:~~
~~(a) Clean, safe, and in good repair; and~~
~~(b) Meet the physical, developmental needs, and interests of children of different age groups.~~
~~(18) A child care facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day, as specified in Section 1 of this administrative regulation. Toys shall be:~~
~~(a) Used according to the manufacturer's safety specifications;~~
~~(b) Durable; and~~
~~(c) Without sharp points or edges.~~
~~(19) Tables and chairs shall be of suitable size for children.~~
~~(20) Storage space shall be provided:~~
~~(a) In the form of low open shelves accessible to the children; and~~
~~(b) In sufficient quantity for each child's clothing.~~
~~(21) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for a child in attendance for more than three and one-half (3 1/2) hours per day. A crib shall have a firm, comfortable~~

~~waterproof mattress. Individual sheets and covers shall be provided for a child and laundered a minimum of once per week or as needed. If mats are used, floors shall be free from drafts and dampness. A cot and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by a person.~~
~~(22) A tiered crib shall not be used.~~
~~(23) Supplies shall be stored so that the adult can reach them without leaving the child unattended.~~
~~(24) Chairs shall be provided for staff to use when feeding, holding or playing with a child.~~]

MARK CORNETT, Deputy Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 14, 2008
FILED WITH LRC: January 15, 2008 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the registration of an advanced registered nurse practitioner. This administrative regulation establishes the requirements for registration, renewal, and reinstatement; programs; and recognition of a national certifying organization.

Section 1. An applicant for registration as an advanced registered nurse practitioner in Kentucky shall: (1) Complete an "Application for Registration as an Advanced Registered Nurse Practitioner" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b)1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced registered nursing practice designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for registration as an advanced registered nurse practitioner completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate ~~[in nursing practice degree]~~, or postmaster's certificate awarding academic credit by a college or university related to the advanced registered nurse practitioner designation.

(b) If the applicant for registration as an advanced registered nurse practitioner completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American College of Nurse Midwives;

(c) ACNM Certification Council;

(d) Council on Certification/Recertification of Nurse Anesthetists;

(e) Pediatric Nursing Certification Board;

(f) National Certification Corporation;

(g) American Academy of Nurse Practitioners;

(h) American Association of Critical-Care Nurses Certification Association; and

(i) Oncology Nursing Certification Corporation.

Section 4. Practice Pending Registration. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for initial certification by a national certifying organization shall be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner in the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this paragraph:

1. Supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards; and

2. The supervisor shall be immediately available either on site or by telephone.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this subsection shall extend until the applicant has learned the results of the request for certification.

(e) An applicant who has previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until he has been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement, shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection

(1) of this section may use the title "ARNP Applicant" or "ARNP App.".

Section 5. Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "ARNP Registration Renewal Application" form as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced registered nurse practitioner until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced registered nurse practitioner registration has been reinstated.

Section 6. Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by applicable law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed "Application for Registration as an Advanced Registered Nurse Practitioner" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

Section 7. Certification or Recertification. (1)(a) An advanced registered nurse practitioner shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the registration period.

(b) The board shall conduct an audit to verify that an advanced registered nurse practitioner has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not Practice or use the title of advanced registered nurse practitioner until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced registered nursing practice; or

(2) An advanced registered nurse practitioner refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures.

Section 11. A nurse practicing as an advanced registered nurse practitioner who is not registered as an advanced registered nurse practitioner by the board, an advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or an advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

JIMMY ISENBERG, President

APPROVED BY AGENCY: February 8, 2008

FILED WITH LRC: February 11, 2008 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets registration requirements for ARNPs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: It recognizes the new Doctorate of Nursing Practice (DNP) degree for ARNPs.

(b) The necessity of the amendment to this administrative regulation: Schools of nursing are instituting the DNP degree in place of the Master's degree.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate requirements.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DNP graduates, number unknown.

(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: They will have to meet the requirements for registration as an ARNP.

(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 associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DNP graduates will be qualified to apply for registration as ARNPs.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

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

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

lished any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all 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 Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.042 and 314.131.

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? Some additional revenue may be generated for the Board through additional registration fees from DNP graduates. The amount is impossible to estimate.

(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? Some additional revenue may be generated for the Board through additional registration fees from DNP graduates. The amount is impossible to estimate.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.042, 314.193(2)
STATUTORY AUTHORITY: KRS 314.131(1), 314.193(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced registered nursing practice to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced registered nurse practitioner.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced registered nurse practitioner and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced registered nurse practitioner and the physician contributing their respective expertise.

(2) "Collaborative "Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Non-scheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

(3) "Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9).

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;

(2) Nursing: Scope and Standards of Practice[~~Advanced Practice Registered Nursing~~];

(3) Scope and Standards for Nurse Anesthesia Practice;

(4) Standards for Office-based Anesthesia Practice;

(5) Standards for the Practice of Midwifery;

(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(7) Scope and Standards of Practice: Pediatric Nurse Practitioner;

(8) Standards of Practice for Nurse Practitioners;

(9) Scope of Practice for Nurse Practitioners;

(10) Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner;

(11) Neonatal Nursing: Scope and Standards of Practice;

(12) Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist; and

(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced registered nursing practice, the advanced registered nurse practitioner shall seek consultation or referral in those situations outside the advanced registered nurse practitioner's scope of practice.

Section 4. Advanced registered nursing practice shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced registered nurse practitioner.

Section 5. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license or registration number of both the advanced registered nurse practitioner and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced registered nurse practitioner. An advanced registered nurse practitioner shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the ARNP shall file with the board the "Notification of a Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the ARNP and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the ARNP's and the physician's actual practice.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS[~~written collaborative practice agreement~~] shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced registered nurse practitioner to determine if the advanced registered nurse practitioner's practice is consistent with the requirements established by 201 KAR Chapter 20.

Section 9. Incorporation by Reference. (1) The following mate-

rial is incorporated by reference:

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2000 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice[~~Advanced Practice Registered Nursing~~]", 2004[~~1996~~] Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2005[~~2002~~] Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2005[~~2002~~] Edition, American Association of Nurse Anesthetists;

(e) "Standards for the Practice of Midwifery", 2003 Edition, American College of Nurse-midwives;

(f) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2002 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Scope and Standards of Practice: Pediatric Nurse Practitioner", 2004 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2006[~~2002~~] Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2006[~~2002~~] Edition, American Academy of Nurse Practitioners;

(j) "Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner", 1995 Edition. American Nurses' Association/American Association of Critical Care Nurses;

(k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) "Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist", 2002 Edition, American Association of Critical-Care Nurses; and

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society.

(n) "Notification of a Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)", 8/2006, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: February 8, 2008

FILED WITH LRC: February 11, 2008 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets scope and standards of practice for ARNPs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting scope and standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting scope and standards of practice.

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

(a) How the amendment will change this existing administrative regulation: It updates several scope and standards of practice statements. It also corrects a reference to the collaborative agreements that were changed by legislation in 2006.

(b) The necessity of the amendment to this administrative regulation: Several scope and standards of practice statements have been revised.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate requirements.

(d) How the amendment will assist in the effective administration of the statutes: By setting current scopes and standards of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ARNPs. There are currently approximately 3,300.

(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: They will have to comply with the new scope and standards of practice.

(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 associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be practicing properly.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all 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 Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.042 and 314.131.

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 will be generated.

(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.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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
(Amended After Comments)

201 KAR 21:070. Licensing examination requirements.

RELATES TO: KRS 312.019(9)(b), (c), 312.115(2)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019, 312.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 empowers the Board of Examiners to adopt administrative regulations. KRS 312.019 and 312.115 provide that the Board of Examiners may adopt administrative regulations. KRS 312.019(9)(b) and (c) provide that they may adopt administrative regulations concerning the conduct of examinations and the professional qualifications for applicants for license. KRS 312.115(2) provides that the examination may consist in part of the National Board Examination [~~Test~~] of the National Board of Chiropractic Examiners. This administrative regulation, as its function, establishes those examination procedures.

Section 1. [~~National Board Certificate of Attainment and Written Clinical Competency Examination Required.~~] (1) An applicant for licensure [~~and practical examination~~] shall hold a National Board of Chiropractic Examiners Certificate of Attainment which indicates that the applicant has passed the National Board of Chiropractic Examiners examination, parts I, II, III, and IV [~~and II~~]. [~~The applicant must also pass the National Board of Chiropractic Examiners Physiotherapy~~] [~~written clinical competency~~] [~~examination administered by the National Board of Chiropractic Examiners.~~]

(2) An official National Board of Chiropractic Examiners transcript of scores for parts I, II, III, and IV [~~and the physiotherapy~~] [~~and II and the written clinical competency~~] [~~examination~~] shall be on file with the Kentucky Board of Chiropractic Examiners. [~~board thirty (30) days prior to the board's administration to the applicant of an examination in which the applicant is required to demonstrate practical clinical competency.~~] Official transcripts shall be requested [~~obtained~~] by the applicant to be [~~and~~] sent to the Kentucky Board of Chiropractic Examiners directly from the National Board of Chiropractic Examiners [~~to the board~~].

(3) The state's requirement for successful completion (passage) of all parts of the National Board of Chiropractic Examiners [~~written clinical competency~~] examination shall be the National Board of Chiropractic Examiners [~~a scaled score of 375 or the~~] recommended passing score [~~of the National Board of Chiropractic Examiners, whichever is greater. The state's requirement for successful completion (passage) of the state practical clinical competency examination shall be a score of seventy-five (75) percent or greater~~].

(4) This administrative regulation shall be effective January 1, 2007[~~1990~~].

MARK WOODWARD, President
APPROVED BY AGENCY: November 12, 2007
FILED WITH LRC: February 15, 2008 at 10 a.m.
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 establishes the examination requirements for licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the examination requirements for licensure so that applicants for licensure are placed on notice.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to adopt administrative regulations concerning the conduct of examinations and the professional qualifications for applicants for licensure. This administrative regulation establishes those exam procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the examination requirements approved by the board, thus placing applicants on notice of the requirements necessary for licensure.
(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 examination requirements necessary for licensure applicants.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the examination and professional requirements which applicants for licensure to practice chiropractic in the Commonwealth of Kentucky must fulfill.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by clarifying the sections of the national examination which applicants must successfully complete.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the sections of the national examination which must be successfully completed prior to application for licensure.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 65 applicants per year.
(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: All applicants for licensure are required to submit proof of passage of the components of the national examination specified.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees charged to take the national examination are charged by the NBCE and are not submitted to the Kentucky Board of Chiropractic Examiners. The board does not have any control over the amount charged by the national organization.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensure will be issued.
(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 applicants for licensure.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Property and Casualty Division

(Amended After Comments)

806 KAR 13:150. **Property and casualty rate and rule filings.**

RELATES TO: KRS **304.1-010, 304.1-050,** 304.4-010(2), **304.13-011,** 304.13-031, 304.13-051, 304.13-061, 304.13-081, 304.21-010, 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110[, 304.4-010]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the executive director [Commissioner of Insurance] to promulgate [reasonable administrative rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010 [to 304.99-152]. This administrative regulation establishes [property and casualty] rate and rule filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

Section 1. Definitions. (1) "Executive director" is defined in KRS 304.1-050(1).

(2) "Loss cost" means the loss cost per unit of exposure excluding all loss adjustment expenses.

(3) "Office" is defined in KRS 304.1-050(2).

(4) "Rate" is defined in KRS 304.13-011(22).

(5) "Supplementary rating information" is defined in KRS 304.13-011(2).

Section 2. (1) Paper filings shall include two (2) full document sets, on 8 1/2" x 11" white paper, with three (3) copies of Form PC TD-1, "Property **&** [and] Casualty Transmittal Document" and a self-addressed stamped envelope.

(2) A property and casualty insurance company, advisory organization, or statistical agent may file a rate or supplementary rating information in an electronic format established by the National Association of Insurance Commissioners. **An electronic filing shall be in lieu of a paper filing.**

Section 3. (1) Every insurer, other than life or health insurers, required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, supplementary rating information [rating plans, rating rules, underwriting rules or guidelines], statistical plans, advertising and sales materials, or other documents shall file with these documents a [fully] completed and signed Form PC TD-1, "Property and Casualty Transmittal Document." [If the filing is being made by a third party, a signed letter of authorization from the company shall be submitted.]

(2) If the filing is being made by a third party, a signed letter of authorization from the **insurer** [company] shall be submitted. [Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", and if applicable Form F-1G P & C, "Group Member Companies Included in this Filing".

Section 2. All filings shall include two (2) full document sets with three (3) cover letters and a self-addressed stamped envelope.]

Section 4. **(1)**[3.] A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance from the "Uniform Property and Casualty Product Coding Matrix" [line of insurance].

(2) Rates, loss costs, and supplementary rating information [rules] shall be filed separately from forms.

Section 5. All rate, loss cost, or supplementary rating information filings shall be accompanied by Form PC RRFS-1, "Rate/Ruling Filing Schedule." [4. (1) All rate or loss cost filings shall also be accompanied by Form S-1 P & C, "Filing Synopsis for Rates".

(2) All rate or loss cost filings shall include a separate Form S-1 P & C for each company included in the filing.

Section 5. (1) All rule filings shall be accompanied by Form S-3 P & C, "Filing Synopsis for Rules".

(2) All rule filings shall include a separate Form S-3 P & C for each company included in the filing.]

Section 6. (1)(a) Rate [All rate] filings referencing loss costs formulated by an [any] advisory organization shall be accompanied by Form LC-1 P & C, "Calculation of Loss Cost Multiplier".

(b) A [All] rate filing [filings] referencing loss costs formulated by an advisory organization in which an expense constant is used shall be accompanied by Form LC-2 P & C, "Expense Constant Supplement**, Calculation of Loss Cost Multiplier**".

(2) A [All] rate filing [filings] to which this section applies shall include separate Forms LC-1 P & C**; Calculation of Loss Cost Multiplier; and LC-2 P&C; Expense Constant Supplement, Calculation of Loss Cost Multiplier**[, "Calculation of Loss Cost Multiplier" and LC-2 P & C, "Expense Constant Supplement"] for each company included in the filing.

Section 7. (1)**(a)** An insurer filing rates or supplement rating information [Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group,] regarding personal automobile insurance shall submit premium comparison information [shall be accompanied by Form SG-1 P & C, "Shopper's Guide Rate Comparison for Auto Insurance" which shall be submitted] on-line via the Office [Department] of Insurance website if any rate or supplementary rating information [rule] change impacts the premium information previously submitted [reported on form SG-1 P & C].

(b) If there is not an [If there is no] impact to premium information previously submitted [filed on Form SG-1 P & C on-line], an explanatory statement shall be included in Form PC TD-1, "Property and Casualty Transmittal Document." [the cover letter.]

(2)**(a)** An insurer filing rates or supplemental rating information [Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group] regarding homeowners' insurance shall submit premium comparison information [shall be accompanied by Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance" which shall be submitted] on-line via the Office [Department] of Insurance website if any rate or supplementary rating information [rule] change impacts the premium information previously submitted [reported on Form SG-2 P & C].

(b) If there is not an [If there is no] impact to premium information previously submitted [filed on Form SG-2 P & C] on-line, an explanatory statement shall be included in Form PC TD-1 "Property and Casualty Transmittal Document." [the cover letter.]

(3) A filing [All filings] to which this section applies shall include a separate premium comparison information [Form SG-1 P & C or SG-2 P & C] for each company included in the filing.

Section 8. **(1)** A property and casualty rate or supplementary rating information [rule] filing may include rates or supplementary rating information for a particular insurance company[,] or group of insurance companies [if the material is identical to all companies].

(2) If the filing is made for a group of insurance companies, Form PC TD-1, "Property and Casualty Transmittal Document" [Form F-1G P & C] shall [be filed to] identify all [member] companies [of the group that are to be] included in the filing.

Section 9. **(1)** Filing fees shall be paid on a per company basis.

(2) Pursuant to KRS 304.4-010(2), all fees and charges payable under the insurance code are required to be collected in advance.

(3) The period of time in which the executive director [commissioner] may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the office [department].

Section 10. (1) An insurer that is a member, subscriber, or service purchaser [Insurers that are members, subscribers, or service purchasers] of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, [rating plans, rating rules, rating schedules, other] supplementary rating information, [underwriting rules or guidelines,] or statistical plans of that advisory organization or statistical agent.

(2) If an insurer chooses to adopt only a specific filing of an

advisory organization or statistical agent, it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting.

(3)(a) If an insurer chooses to adopt all of the current and future loss costs, [~~rating plans, rating rules, rating schedules, other~~] supplementary rating information, [~~underwriting rules or guidelines,~~] or statistical plans of an advisory organization or statistical agent, it **shall** [~~may~~]:

1. Provide written authorization to the advisory organization or statistical agent to notify the executive director [~~commissioner~~] that the insurance company shall adopt all of the loss costs, [~~rating plans, rating rules, rating schedules, other~~] supplementary rating information, [~~underwriting rules or guidelines,~~] or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the executive director [~~commissioner~~] that the insurer is adopting by reference all of the current and future loss costs, [~~rating plans, rating rules, rating schedules, other~~] supplementary rating information, [~~underwriting rules or guidelines,~~] or statistical plans that the advisory organization or statistical agent files.

(b)**1.** If required by law to file its rates, an insurer may file a loss cost multiplier, in accordance with **this section and** Sections 2[~~1~~] through **9**[~~10~~][~~6~~] of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization.

2. The insurer **shall:**

a. [~~may~~] Apply its loss cost multiplier to a specific loss cost filing;[~~,~~] or

b. [~~may~~] Elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c)**1.** The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the executive director [~~commissioner~~] and shall pay the appropriate fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending a written authorization and on the basis of each line of insurance.

(d)1. If an insurer that previously authorized an advisory organization or statistical agent to file loss costs, [~~rating plans, rating rules, rating schedules, other~~] supplementary rating information, [~~underwriting rules or guidelines,~~] or statistical plans on its behalf chooses to not adopt certain loss costs, [~~rating plans, rating rules, rating schedules, other~~] supplementary rating information, [~~underwriting rules or guidelines,~~] or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the executive director [~~commissioner~~] and shall pay the appropriate filing fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or statistical agent.

3. If an insurer fails to adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. A property and casualty insurance company, advisory organization and statistical agent [~~Property and casualty insurance companies, advisory organizations, and statistical agents~~] may file its [~~their~~] prospective loss cost [~~costs~~] or rate [~~rates~~] in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that format. An [~~Any~~] electronic filing shall substitute for any physical filing.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Property and Casualty Product Coding Matrix", (March 1, 2007);

(b) Form PC TD-1, "Property and Casualty Transmittal Document", (March 1, 2007);

(c) Form PC RRFS-1, "Rate/Rule Filing Schedule", (March 1, 2007);

(d) LC-1 P&C, "Calculation of Loss Cost Multiplier", **(October 2007);** [~~(10/2007)~~]

(e) LC-2 P&C, "Expense Constant Supplement, Calculation of Loss Cost Multiplier with Expense Constant", **(October 2007);**

(f) "Kentucky Office of Insurance Review Requirements Checklist, Auto Guaranty and Home Warranty", (2nd Edition, 2/2008);

(g) "Kentucky Office of Insurance Review Requirements Checklist, Motor Vehicle Extended Warranty Reimbursement Insurance", (2nd Edition, 2/2008);

(h) "Kentucky Office of Insurance Review Requirements Checklist, Aviation", (2nd Edition, 02/2008);

(i) "Kentucky Office of Insurance Review Requirements Checklist, Boatowners", (2nd Edition, 02/2008);

(j) "Kentucky Office of Insurance Review Requirements Checklist, Boiler & Machinery (Equipment Breakdown)", (2nd Edition, 02/2008);

(k) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Auto", (2nd Edition, 02/2008);

(l) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Farm", (2nd Edition, 02/2008);

(m) "Kentucky Office of Insurance Review Requirements Checklist, Commercial General Liability", (2nd Edition, 02/2008);

(n) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Inland Marine", (2nd Edition, 02/2008);

(o) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Property", (2nd Edition, 2/2008);

(p) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Umbrella (Excess Liability)", (2nd Edition, 02/2008);

(q) "Kentucky Office of Insurance Review Requirements Checklist, Credit (Vendor Single/Dual Interest; Unemployment/Layoff; Collateral Protection; Property; GAP)", (2nd Edition, 2/2008);

(r) "Kentucky Office of Insurance Review Requirements Checklist, Crime", (2nd Edition 2/2008);

(s) "Kentucky Office of Insurance Review Requirements Checklist, Crop", (2nd Edition, 2/2008);

(t) "Kentucky Office of Insurance Review Requirements Checklist, Earthquake (monoline)", (2nd Edition, Revised 2/2008);

(u) "Kentucky Office of Insurance Review Requirements Checklist, Employment Practices Liability", (2nd Edition, Revised 2/2008);

(v) "Kentucky Office of Insurance Review Requirements Checklist, Flood (monoline)", (2nd Edition, Revised 2/2008);

(w) "Kentucky Office of Insurance Review Requirements Checklist, Glass (Monoline)", (2nd Edition, Revised 2/2008);

(x) "Kentucky Office of Insurance Review Requirements Checklist, Livestock, Equine and Pet Insurance", (2nd Edition, 2/2008);

(y) "Kentucky Office of Insurance Review Requirements Checklist, Medical Professional Liability (Physicians & Dentists; Hospital & Health Facilities; Other Medical)", (2nd Edition, 2/2008);

(z) "Kentucky Office of Insurance Review Requirements Checklist, Mortgage Guaranty", (2nd Edition, 2/2008);

(aa) "Kentucky Office of Insurance Review Requirements Checklist, Motorcycle", (2nd Edition, 2/2008);

(bb) "Kentucky Office of Insurance Review Requirements Checklist, Motor Home", (2nd Edition, 2/2008);

(cc) "Kentucky Office of Insurance Review Requirements Checklist, Personal Dwelling, Homeowners, Mobile homeowners, and Farm owners including primary residence)", (2nd Edition, Revised 2/2008);

(dd) "Kentucky Office of Insurance Review Requirements Checklist, Personal General Liability and Personal Umbrella/Excess", (2nd Edition, Revised 2/2008);

(ee) "Kentucky Office of Insurance Review Requirements Checklist, Personal Inland Marine and Recreational Vehicle not requiring vehicle registration", (2nd Edition, Revised 2/2008);

(ff) "Kentucky Office of Insurance Review Requirements Checklist, Personal Auto", (2nd edition, Revised 2/2008);

(gg) "Kentucky Office of Insurance Review Requirements Checklist, Pollution Legal Liability (Environmental Legal Liability)", (2nd Edition, 2/2008);

(hh) "Kentucky Office of Insurance Review Requirements Checklist, Professional Liability (Directors & Officers; Physicians & Dentists; Other Medical Personnel;) (Misc. Professional; Lawyers; Hospital & Health Facilities)", (2nd Edition, 2/2008);

(ii) "Kentucky Office of Insurance Review Requirements Checklist, Service Contract Reimbursement Insurance", (2nd Edition, 2/2008);

(jj) "Kentucky Office of Insurance Review Requirements Checklist, Stop Loss//Excess of Loss (Self-Funded--Workers' Compensation; HMO & Managed Care; General Liability; Professional Liability & Misc. Stop Loss) {Stop loss for Self-Funded Health Plans must be filed with the Health Division of KOI even if the filer holds a P&C Certificate of Authority}", (2nd Edition, 2/2008);

(kk) "Kentucky Office of Insurance Review Requirements Checklist, Surety (Fidelity, Suretyship and Financial Institution Bonds)", (2nd Edition 2/2008);

(ll) "Kentucky Office of Insurance Review Requirements Checklist, Title", (2nd Edition, 2/2008);

(mm) "Kentucky Office of Insurance Review Requirements Checklist, Travel & Accident", (2nd Edition, 2/2008); and

(nn) "Kentucky Office of Insurance Review Requirements Checklist, Workers' Compensation", (2nd Edition, 2/2008). [~~(10/2007)~~] [~~Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", June, 2000 edition, Department of Insurance.~~

~~(b) Form F-1G P & C, "Group Member Companies Included in this Filing", May, 2000 edition, Department of Insurance.~~

~~(c) Form S-1 P & C, "Filing Synopsis for Rates", January, 1999 edition, Department of Insurance.~~

~~(d) Form S-3 P & C, "Filing Synopsis for Rules", January, 1999 edition, Department of Insurance.~~

~~(e) Form LC-1 P & C, "Calculation of Loss Cost Multiplier", August, 2000 edition, Department of Insurance.~~

~~(f) Form LC-2 P & C, "Expense Constant Supplement", August, 2000 edition, Department of Insurance.~~

~~(g) Form SG-1 P & C, "Shopper's Guide Rate Comparison for Personal Auto Insurance", May 1, 2002 edition, Department of Insurance.~~

~~(h) Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance", May 1, 2002 edition, Department of Insurance~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office [~~Department~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Internet Web site at: http://doi.ppr.ky.gov or the web site of the National Association of Insurance Commissioners at www.naic.org.

TIMOTHY LEDONNE, Acting Executive Director, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 14, 2008

FILED WITH LRC: February 15, 2005 at 11 a.m.

CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for filing procedures for rates and supplementary rating information for property, casualty, surety, title and mortgage guaranty insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a uniform procedure for filing rates and supplementary rating information with the Office of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed by an entity requesting approval of a property, casualty, surety, title or mortgage guaranty insurance rates to be used in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Various statutes within the Insurance Code require insurers to receive approval of rates prior to use in Kentucky. This administrative regulation sets forth the procedure to be followed in obtaining approval.

(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 adopt the National Association of Insurance Commissioners (NAIC) uniform transmittal document, form filing schedule and coding matrix. The Kentucky specific forms will be repealed through this amendment. Additionally, this amendment updates the Shopper's Guide Rate Comparisons for homeowners and automobile rates. This will provide updated, relevant information to be included in the Office of Insurance consumer guide.

(b) The necessity of the amendment to this administrative regulation: Kentucky participates in a national initiative to provide uniform procedures in form and rate filings among the state insurance regulators. The amendments to this administrative regulation are a piece of that national initiative relating to rate filings for property, casualty, surety, title and mortgage guaranty insurance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed by an entity requesting approval of a property, casualty, surety, title or mortgage guaranty insurance rate to be used in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will streamline the rate filing process and bring Kentucky's procedure into uniformity with other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 915 insurers that are licensed to offer property, casualty, surety, title and mortgage guaranty insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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 will be required to utilize these new documents in filing rates for approval in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The transmittal documents are readily available on the Office's Web site. The cost of printing the documents is minimal. Additionally, this regulation is not establishing or raising fees for filing the products. Therefore, no additional filing fees will be incurred as a result of this regulation. Finally, the process adopted through this administrative regulation is a national standard that insurers currently may be utilizing in other states. This streamlining of Kentucky's process may have a positive fiscal impact on the

regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this regulation, entities will have their filings processed timely and efficiently by the Office of Insurance.

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

(a) Initially: The cost will be minimal.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies.

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 as the implementer of the regulation.

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.

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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:815. Nondiagnostic Related Group Inpatient Hospital Reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), tt, ww(d)(5)(F), x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), 205.641(2), 216.380(13), 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a, 1396r-4

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions related to non-DRG-reimbursed inpatient hospital reimbursement including provisions necessary to enhance reimbursement pursuant to KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

Section 1. Definitions. (1) "Base year" means the state fiscal year cost reporting period used to establish a per diem rate.

(2) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(3) "CMS" means Centers for Medicare and Medicaid Services.

(4) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110, Critical access hospital services.

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

(6) "Diagnostic related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(7) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25.

(8) "DRG service" means a discharge, excluding crossover claims or no pay claims, assigned a discharge classification by the diagnostic related group grouper used by the department, pursuant to 907 KAR 1:013, Diagnostic and related group (DRG) inpatient hospital reimbursement, whether the discharge is reimbursed by discharge or via a per diem basis.

(9) "GII" means Global Insight, Incorporated.

(10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(11) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Long-term acute care hospital" or "LTAC" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(13) "Medical education cost" means a direct cost that is:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(14) "Operating cost" means allowable routine, ancillary service, or special care unit cost related to inpatient hospital care.

(15) "Parity factor" means a factor applied to a per diem rate to establish cost coverage parity with diagnostic related group hospital reimbursement.

(16) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(17) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180, Psychiatric hospitals; operation and services.

(18) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240, Comprehensive physical rehabilitation hospital services.

(19) "State-designated free-standing rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:

(a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;

(b) Provides at least fifty-one (51) percent of the statewide total of inpatient acute rehabilitation care to Medicaid-eligible recipients;

(c) Provides physical and occupational therapy services to

Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution post-discharge;

(d) Is licensed as an acute hospital limited to rehabilitation; and

(e) Is a teaching hospital.

(20) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a recipient.

(21) "Third party payor" means a payor of a third party pursuant to KRS 205.510(16).

(22) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(23) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(24) "Weighted average" means an average that reflects an individual element's proportionality to all elements.

Section 2. Payment for Rehabilitation or Psychiatric Care in an In-State Acute Care Hospital. (1) For rehabilitation care in an in-state acute care hospital that has a Medicare-designated rehabilitation distinct part unit, the department shall reimburse:

(a) A facility specific per diem based on the most recently received Medicare cost report received prior to the rate year, trended and indexed to the current state fiscal year; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

(2) The department shall reimburse for psychiatric care in an in-state acute care hospital that has a Medicare-designated psychiatric distinct part unit on a per diem basis as follows:

(a) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital's psychiatric per diem rate by the number of allowed patient days.

(b) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

1. The psychiatric operating cost-per-day amounts used to determine the psychiatric operating per diem rate shall be calculated for each hospital by dividing its Medicaid psychiatric cost basis, excluding capital costs and medical education costs, by the number of Medicaid psychiatric patient days in the base year.

2. The Medicaid psychiatric cost basis and patient days shall be based on Medicaid claims for patients with a psychiatric diagnosis with dates of service in the base year. The psychiatric operating per diem rate shall be adjusted for:

a. The price level increase from the midpoint of the base year to the midpoint of the universal rate year using the CMS Input Price Index; and

b. The change in the Medicare published wage index from the base year to the universal rate year.

(c)1. A psychiatric capital per diem rate shall be facility-specific and shall be calculated for each hospital by dividing its Medicaid psychiatric capital cost basis by the number of Medicaid psychiatric patient days in the base year.

2. The Medicaid psychiatric capital cost basis and patient days shall be based on Medicaid claims for patients with psychiatric diagnoses with dates of service in the base year.

3. The psychiatric capital per diem rate shall not be adjusted for inflation.

(3) The department shall reimburse for rehabilitation or psychiatric care provided in an in-state hospital that does not have a Medicare-designated distinct part unit:

(a)1. On a facility specific per diem basis equivalent to its aggregate projected payments for DRG services divided by its aggregate projected Medicaid paid days.

2. Aggregate projected payments and projected Medicaid paid days shall be the sum of:

a. Aggregate projected payments and aggregate projected Medicaid paid days for non-per diem DRG services as calculated by the model established in 907 KAR 1:013, Diagnostic related group (DRG) inpatient hospital reimbursement;

b. Actual prior year payments inflated by the GII; and

c. Per diem DRG service Medicaid days; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

Section 3. Payment for Long-term Acute Care Hospital Care, In-State Freestanding Psychiatric Hospital Care, and In-State Freestanding Rehabilitation Hospital Care. (1) The department shall reimburse for inpatient care provided to eligible Medicaid recipients in an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, or LTAC hospital on a per diem basis.

(2) The department shall calculate a per diem rate by:

(a) Using a hospital's state fiscal year 2005 cost report, allowable cost and paid days to calculate a base cost per day for the hospital;

(b) Trending and indexing a hospital's specific cost, excluding capital cost, per day to the current state fiscal year;

(c) Calculating an average base cost per day for hospitals within similar categories, for example rehabilitation hospitals, using the indexed and trended base cost per day;

(d) Assigning no hospital a base cost per day equaling less than ninety-five (95) percent of the weighted average trended and indexed base cost per day of hospitals within the corresponding category;

(e) Applying a parity factor equivalent to aggregate cost coverage established by the DRG reimbursement methodology described in 907 KAR 1:013, Diagnostic related group hospital reimbursement; and

(f) Applying available provider tax funds on a pro-rata basis to the pre-provider tax per diem calculated in paragraphs (a) through (e) of this subsection.

Section 4. Payment to a Newly-participating In-State Freestanding Psychiatric Hospital, Freestanding Rehabilitation Hospital or a Long Term Acute Care Hospital. (1) The department shall reimburse a newly-participating in-state freestanding psychiatric hospital, freestanding rehabilitation hospital or long term acute care hospital the minimum per diem rate paid to hospitals in their category until the first fiscal year cost report submitted by the hospital has been finalized.

(2) Upon finalization of the first fiscal year cost report for a facility, the department shall reimburse the facility a per diem rate in accordance with Section 3 of this administrative regulation.

Section 5. Payment for Critical Access Hospital Care. (1) The department shall pay a per diem rate to a critical access hospital equal to the hospital's Medicare rate.

(2) A critical access hospital's final reimbursement for a fiscal year shall reflect any adjustment made by CMS.

(3)(a) A critical access hospital shall comply with the cost reporting requirements established in Section 10 of this administrative regulation.

(b) A cost report submitted by a critical access hospital to the department shall be subject to audit and review.

(4) An out-of-state critical access hospital shall be reimbursed under the same methodology as an in-state critical access hospital.

(5) The department shall reimburse for care in a federally defined swing bed in a critical access hospital pursuant to 907 KAR 1:065, Payments for price-based nursing facility services.

Section 6. Reimbursement Limit. Total reimbursement to a hospital, other than to a critical access hospital, shall be subject to the limitation established in 42 C.F.R. 447.271.

Section 7. In-State Hospital Reimbursement Updating Procedures. (1) The department shall adjust an in-state hospital's per diem rate annually according to the following:

(a) An operating and professional component per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the GII; and

(b) A capital per diem rate shall not be adjusted for inflation.

(2) The department shall, except for a critical access hospital, rebase an in-state hospital's per diem rate every four (4) years.

(3) Except for an adjustment resulting from an appeal in accor-

dance with Section 21, the department shall make no other adjustment.

Section 8. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform to a universal rate year.

Section 9. Cost Basis. (1) An allowable Medicaid cost shall:

(a) Be a cost allowed after a Medicaid or Medicare audit;

(b) Be in accordance with 42 C.F.R. Parts 412 and 413;

(c) Include an in-state hospital's provider tax; and

(d) Not include a cost listed in Section 11 of this administrative regulation.

(2) A prospective rate shall include both routine and ancillary costs.

(3) A prospective rate shall not be subject to retroactive adjustment, except for:

(a) A critical access hospital; or

(b) A facility with a rate based on un-audited data.

(4) An overpayment shall be recouped by the department as follows:

(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or

(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 10. In-State Hospital Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of a Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year; and

(b) Except as follows, the department shall not grant a cost report submittal extension:

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b)1. A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services.

2. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c)1. A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity.

2. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

3. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Trending of an In-state Hospital's Cost Report Used for Rate Setting Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or un-audited, shall be trended to the beginning of the universal rate year to update an in-state hospital's Medicaid cost.

(2) The trending factor, referenced in subsection (1) of this section, to be used shall be the inflation factor prepared by GII for the period being trended.

Section 13. In-State Hospital Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The department shall apply the inflation factor prepared by GII for the universal rate year as the indexing factor.

Section 14. In-State Hospital Minimum Occupancy Factor. (1) If an in-state hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer total licensed beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more total licensed beds; and

(c) A newly-constructed in-state hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 15. Reduced Depreciation Allowance. The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

Section 16. Reimbursement for Out-of-state Hospitals. (1) For inpatient psychiatric or rehabilitation care provided by an acute out-of-state hospital, the department shall reimburse a per diem rate comprised of an operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall be the median operating cost, excluding graduate medical education cost or any provider tax cost, per day for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180, Psychiatric hospitals; operation and services.

(b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate paid for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180, Psychiatric hospitals; operation and services.

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

(2) For care provided by an out-of-state freestanding psychiatric hospital, the department shall reimburse a per diem rate comprised of a psychiatric operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall equal the median operating cost, excluding graduate medical education cost or any provider tax cost, per day for all in-state freestanding psychiatric hospitals.

(b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate for all in-state freestanding psychiatric hospitals.

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

(3) For care in an out-of-state rehabilitation hospital, the department shall reimburse a per diem rate equal to the median re-

habilitation per diem rate for all in-state rehabilitation hospitals minus any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

(4) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made via this section of this administrative regulation.

Section 17. Supplemental Payments. In addition to a payment based on a rate developed under Section 2, 3, or 4 of this administrative regulation, the department shall:

(1) Make quarterly supplemental payments to an in-state hospital which qualifies as a psychiatric access hospital in an amount:

(a) Equal to the hospital's uncompensated costs of providing care to Medicaid recipients and individuals not covered by a third party payor, not to exceed $6 million annually; and

(b) Consistent with the requirements of 42 C.F.R. 447.271; and

(2) Make an annual payment to an in-state state-designated free-standing rehabilitation teaching hospital that is not state-owned or operated in an amount:

(a) Determined on a per diem or per discharge basis equal to the nonreimbursed costs of providing care to Medicaid recipients;

(b) Costs shall be the amount of cost identified on a hospital's **most recent cost report received by the department** [~~finalized cost report~~] for a fiscal year reduced by the cost of care covered by third parties.

(c) Equal to the amount of per diem payments pursuant to this administrative regulation or per discharge diagnostic related group payments pursuant to 907 KAR 1:013, Diagnostic related group hospital reimbursement, received by the hospital for Medicaid recipients not covered by third parties.

Section 18. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned hospital the full cost of inpatient care via a certified public expenditure (CPE) contingent upon approval by CMS.

(2) To determine the amount of costs eligible for a CPE, an in-state hospital's allowed charges shall be multiplied by the hospital's operating cost-to-total charges ratio.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted cost remains, the department shall reconcile any difference with the provider.

Section 19. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at $10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 20. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(a) A prospective per diem shall be set based on the operating budget and projected number of patient days for care not subject to a diagnostic related group method of reimbursement.

(b) A prospective per diem rate set in accordance with paragraph (a) of this subsection shall be tentative and subject to settlement at the time the first audited fiscal year end report is available to the department.

(c) During the projected rate year, the budget shall be adjusted if indicated and justified by the submittal of additional information.

(3) If two (2) or more separate entities merge into one (1) organization, the department shall:

(a) Merge the latest available data used for rate setting;

(b) Combine bed utilization statistics, creating a new occupancy ratio;

(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;

(d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting;

(e) If one (1) of the entities merging has disproportionate status and the other does not, retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid;

(f) Recognize an appeal of the merged per diem rate in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation, withholding overpayments, administrative appeal process, and sanctions; and

(g)1. Require each provider to submit a Medicaid cost report for the period ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end.

2. A Medicaid cost report for the period starting with the day of the merger and ending on the fiscal year end of the merged entity shall also be filed with the department in accordance with Section 10 of this administrative regulation.

Section 21. Appeals. (1) An administrative review shall not be available for a facility or service reimbursed via the per diem methodology for the determination of the requirement, or the proportional amount, of any budget neutrality adjustment used in the calculation of the per diem rate.

(2) An administrative review shall be available for a calculation error in the establishment of a per diem rate.

(3) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Medicaid Schedule KMAP-1"; January 2007 edition; and

(b) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: February 15, 2008

FILED WITH LRC: February 15, 2008 at 10 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Barry Ingram

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement for nondiagnostic related group (DRG)-reimbursed inpatient hospital care. Previously the provisions were contained in a broader inpatient hospital reimbursement regulation, 907 KAR 1:013, Payments for inpatient hospital services. Policy revision includes basing per diem reimbursement on more recent cost reports and introducing a parity factor to ensure that non-DRG hospital reimbursement keeps pace with

DRG hospital reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws (including KRS 142.303, 205.638, and 2006 Ky Acts ch. 252) governing reimbursement of inpatient hospital care to Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing non-DRG inpatient hospital reimbursement at a level necessary to ensure recipient access to care and by increasing reimbursement in accordance with KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing non-DRG inpatient hospital reimbursement at a level necessary to ensure recipient access to care and by increasing reimbursement in accordance with KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

(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 establishes reimbursement for non-diagnostic related group (DRG)-reimbursed inpatient hospital care. Previously the provisions were contained in a broader inpatient hospital reimbursement regulation, 907 KAR 1:013, Payments for inpatient hospital services. Policy revision includes per diem reimbursement updating by basing per diem reimbursement on more recent cost reports and introducing a parity factor to ensure that non-DRG hospital reimbursement keeps pace with DRG hospital reimbursement. An initial amended version of this administrative regulation was submitted to the Legislative Research Commission (LRC) on October 15 but was withdrawn and replaced by this administrative regulation in order to establish a more appropriate reimbursement for out-of-state freestanding psychiatric hospitals to ensure that in-state freestanding psychiatric hospitals are adequately enabled to care for Kentucky Medicaid recipients. The amendment after comments clarifies that the department will use costs from a hospital's most recently submitted cost report to determine supplemental payments.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation which was previously contained in a larger broad reaching inpatient hospital reimbursement administrative regulation. The Department for Medicaid Services (DMS) is dividing the larger administrative regulation into three narrower in scope administrative regulations. This administrative regulation is necessary to comply with federal and state laws (including KRS 142.303, 205.638, and 2006 Ky Acts ch. 252) governing reimbursement of inpatient hospital care to Medicaid recipients. An initial amended version of this administrative regulation was submitted to the Legislative Research Commission (LRC) on October 15 but was withdrawn and replaced by this administrative regulation in order to establish a more appropriate reimbursement for out-of-state freestanding psychiatric hospitals to ensure that in-state freestanding psychiatric hospitals are adequately enabled to care for Kentucky Medicaid recipients. The amendment after comments is necessary to clarify, rather than amend, policy.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing non-DRG inpatient hospital reimbursement at a level necessary to ensure recipient access to care and by increasing reimbursement in accordance with KRS 142.303, 205.638, and 2006 Ky Acts ch. 252. The amendment after comments complies with statutes by clarifying policy related to the use of cost reports and supplemental payments.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing non-DRG inpatient hospital reimbursement at a level necessary to ensure recipient access to care and by increasing reimbursement in accordance with KRS 142.303, 205.638, and 2006 Ky Acts ch. 252. The amendment after comments complies with statutes by clarifying policy related to the use of cost reports and supplemental payments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all inpatient hospitals not reimbursed via a DRG methodology. The current number of such hospitals is 55.

(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 administrative regulation establishes reimbursement, including a reimbursement increase for all except critical access hospitals, for the regulated entities rather than imposes mandates with associated costs. The amendment after comments clarifies that most recently submitted costs report will be used to determine supplemental payments; thus, ensuring the use of more accurate data for such calculations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation establishes reimbursement, including a reimbursement increase for all except critical access hospitals, for the regulated entities rather than imposes mandates with associated costs. No cost is imposed on hospitals as a result of the amendment after comments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation establishes reimbursement, including a reimbursement increase for all except critical access hospitals, for the regulated entities rather than imposes mandates with associated costs. An initial amended version of this administrative regulation was submitted to the Legislative Research Commission (LRC) on October 15 but was withdrawn and replaced by this administrative regulation in order to establish a more appropriate reimbursement for out-of-state freestanding psychiatric hospitals to ensure that in-state freestanding psychiatric hospitals are adequately enabled to care for Kentucky Medicaid recipients. The amendment after comments clarifies that a hospital's most recently submitted cost report will be used to determine any supplemental payments to it. Using more current cost report data should benefit hospitals.

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

(a) Initially: DMS projects that the amendment will cost approximately $1.5 million ($1.04 million federal funds; $0.46 million state funds) annually. The amendment after comments is not expected to impact departmental cost.

(b) On a continuing basis: DMS projects that the amendment will cost approximately $1.5 million ($1.04 million federal funds; $0.46 million state funds) annually. The amendment after comments is not expected to impact departmental cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX, matching funds of general fund appropriations and hospital provider tax funds pursuant to KRS 142.303, 205.638, and 2006 Ky Acts ch. 252.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation. The current fiscal year budget will not need to be adjusted as a result of the amendment after comments.

(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. The amendment after comments does not add or increase any fee.

(9) Tiering: Is tiering applied? Tiering is applied in that critical access hospitals are reimbursed a Medicare rate as mandated by KRS 216.380 and in accordance with 42 U.S.C. 1395f(l). The amendment after comments does not alter the tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 8 Medicaid-participating per diem hospitals are owned by local government in Kentucky.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The initial amendment and amended after comments are authorized by 42 C.F.R. 412, 413, 42 U.S.C. 1395f(l), KRS 142.303, 205.520(3), 205.638, 216.380, and 2006 Ky Acts ch. 252.

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 is expected to generate additional revenue for local government-owned but not state government-owned hospitals. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(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 is expected to generate additional revenue for county-owned government but not state government. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(c) How much will it cost to administer this program for the first year? DMS projects that the amendment will cost approximately $1.5 million ($1.04 million federal funds; $0.46 million state funds) annually. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(d) How much will it cost to administer this program for subsequent years? DMS projects that the amendment will cost approximately $1.5 million ($1.04 million federal funds; $0.46 million state funds) annually. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

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

Revenues (+/-): ____

Expenditures (+/-): ____

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Chapter 412, Chapter 413, and 447.200, 447.250, 447.271, and 447.272 address inpatient hospital reimbursement provisions.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 addresses Medicaid reimbursement. 2006 Ky Acts ch. 252, KRS 142.303 and 205.638 address the utilization of hospital provider tax revenues to enhance inpatient hospital reimbursement.

3. Minimum or uniform standards contained in the federal mandate. Medicaid agency payments to providers must be sufficient to enlist enough providers so that Medicaid services are available to recipients at least to the same extent that comparable services are available to the general population. Payments for hospital services should be rates that the State finds, and makes assurances satisfactory to the United States Health and Human Services Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:820. Disproportionate share hospital distributions.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), ww(d)(5)(F), x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.639, 205.640, 216.380(12), 42 C.F.R. Parts 412, 413, 447.252, 447.253, 42 U.S.C. 1395ww(d)(5)(F), 1396a, 1396r-4

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639 and 205.640.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument

(3) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110, Critical access hospital services.

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

(5) "Disproportionate share hospital" or "DSH" means an in-state hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 U.S.C. 1396r-4(d).

(6) "DRG" means diagnostic related group.

(7) "DRG-reimbursed hospital" means an in-state hospital reimbursed via a DRG methodology pursuant to 907 KAR 1:013, Diagnostic related group hospital reimbursement.

(8) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(9) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:

(a) To an individual who is:

1. Determined to be indigent in accordance with KRS 205.640; and

2. Not a Medicaid recipient; and

(b) For which an individual shall not be billed by the hospital.

(10) "Indigent care eligibility criteria" means the criteria as specified in Section 9 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.

(11) "Long term acute care hospital" means a hospital that

meets the requirements established in 42 C.F.R. 412.23(e).

(12) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(13) "Private psychiatric hospital" is defined by KRS 205.639(2).

(14) "Pro rata basis" means a basis for allocating an amount proportionately to all hospitals within a hospital category.

(15) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240, Comprehensive physical rehabilitation hospital services.

(16) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(17) "State mental hospital" is defined by KRS 205.639(3).

(18) "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).

(19) "University hospital" is defined by KRS 205.639(4).

Section 2. Disproportionate Share Hospital Distribution General Provisions. A DSH distribution shall:

(a) Be made to a qualified hospital;

(b) Be based upon available funds in accordance with KRS 205.640;

(c) Be based upon a hospital's proportion of inpatient and outpatient indigent care from the preceding state fiscal year;

(d) Be a prospective amount. For example, a DSH distribution made to a hospital in October 2007 shall cover the state fiscal year beginning July 1, 2007 and ending June 30, 2008;

(e) Not be subject to settlement or revision based on a change in utilization during the year to which it applies; and

(f) Be made on an annual basis.

Section 3. Disproportionate Share Hospital Distribution to a DRG-Reimbursed Acute Care Hospital. (1) The department shall determine a DSH distribution to a DRG-reimbursed acute care hospital by:

(a) Determining a hospital's average reimbursement per discharge;

(b) Dividing the hospital's average reimbursement per discharge by Medicaid days per discharge;

(c) Multiplying the amount established in paragraph (b) by the hospital's total number of inpatient indigent care days for the most recently completed state fiscal year to establish the hospital's inpatient indigent care cost;

(d) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091, Workers' compensation hospital fee schedule;

(e) Combining the inpatient indigent care cost established in paragraph (c) with the outpatient indigent care cost established in paragraph (d) to establish a hospital's indigent care cost total; and

(f) Comparing the total indigent care cost for each DRG-reimbursed hospital to the indigent care costs of all hospitals receiving DSH distributions under the acute care pool pursuant to KRS 205.640(3)(d) to establish a DSH distribution on a pro rata basis.

Section 4. Disproportionate Share Hospital Distribution to a Critical Access Hospital, Rehabilitation Hospital or Long Term Acute Care Hospital. The department shall determine a DSH distribution to a critical access hospital, rehabilitation hospital, or long term acute care hospital:

(1) For the period beginning state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:

(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091, Workers' compensation hospital fee schedule;

(c) Combining the inpatient indigent care cost established in paragraph (a) with the outpatient indigent care cost established in paragraph (b) to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(30)(d) to establish a hospital's DSH distribution on a pro rata basis; and

(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:

(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost; and

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091, Workers' compensation hospital fee schedule;

(c) Combining the inpatient indigent care cost established in paragraph (a) with the outpatient indigent care cost established in paragraph (b) to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(30)(d) to establish a hospital's DSH distribution on a pro rata basis.

Section 5. Disproportionate Share Hospital Distribution to a Private Psychiatric Hospital. The department shall determine a DSH distribution to a private psychiatric hospital:

(1) For the period beginning state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:

(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091, Workers' compensation hospital fee schedule or by establishing an inpatient equivalency;

(c) Combining the inpatient indigent care cost established in paragraph (a) with the outpatient indigent care cost established in paragraph (b) to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis; and

(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:

(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost; and

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091, Workers' compensation hospital fee schedule or by establishing an inpatient equivalency;

(c) Combining the inpatient indigent care cost established in paragraph (a) with the outpatient indigent care cost established in paragraph (b) to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis.

Section 6. Disproportionate Share Hospital Distribution to a

State Mental Hospital. The Department shall determine a DSH distribution to a state mental hospital by:

(1) Comparing each state mental hospital's costs of services provided to individuals meeting the indigent eligibility criteria established in Section 9 of this administration regulation, minus any payment made by or on behalf of the individual to the hospital; and

(2) Using the DSH funding allocated to state mental hospitals to establish a state mental hospital's DSH distribution on a pro rata basis.

Section 7. Disproportionate Share Hospital Distribution to a University Hospital. The department's DSH distribution to a university hospital shall:

(1) Be based on the hospital's historical proportion of the costs of services to Medicaid recipients, minus reimbursement paid via 907 KAR 1:013, Diagnostic related group (DRG) inpatient hospital reimbursement, or 907 KAR 1:815, Nondiagnostic related group inpatient hospital reimbursement, plus the costs of services to indigent and uninsured patients minus any distributions made on behalf of indigent and uninsured patients; and

(2) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for distribution under this subsection.

(3) Comply with KRS 205.640(3)(a)2.

Section 8. Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, DSH-001, Application for Disproportionate Share Hospital Program, to assess a patient's financial situation to determine if:

(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or

(b) A patient meets the indigent care eligibility criteria.

(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance, Medicaid or KCHIP, within thirty (30) days of completing the DSH-001, Application for Disproportionate Share Hospital Program, at the hospital.

Section 9. Indigent Care Eligibility Criteria. (1) A hospital shall receive disproportionate share hospital funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of this administrative regulation if the following apply:

(a) The patient is a resident of Kentucky;

(b) The patient is not eligible for Medicaid or KCHIP;

(c) The patient is not covered by a third-party payor;

(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;

(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:

1. The patient;
2. The patient's spouse;
3. The minor's parent or parents living in the home; and
4. Any minor living in the home;

(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;

(g) Countable resources of a family unit shall not exceed:

1. $2,000 for an individual;
2. $4,000 for a family unit size of two (2); and
3. Fifty (50) dollars for each additional family unit member;

(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and

(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.

(2) Except as provided in subsection (3) of this section, total annual gross income shall be the lessor of:

(a) Income received during the twelve (12) months preceding the month of receiving a service; or

(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4).

(3) A work expense for a self-employed patient shall be deducted from gross income if:

(a) The work expense is directly related to producing a good or service; and

(b) Without it the good or service could not be produced.

(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.

(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

Section 10. Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 9 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:

(a) Review evidence regarding the indigent care eligibility determination;

(b) Cross-examine witnesses regarding the indigent care eligibility determination;

(c) Present evidence regarding the indigent care eligibility determination; and

(d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:

(a) The patient or responsible party who requested the fair hearing; and

(b) The department.

(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 11. Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 12. Merged Facility. If two (2) separate entities merge into one (1) organization and one (1) of the merging entities has disproportionate status and the other does not, the department shall retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid.

Section 13. Incorporation by Reference. (1) The following material is incorporate by reference:

(a) "The Disproportionate Share Hospital (DSH) Program Manual", **January 2008** [~~July 2007~~] edition; and

(b) The "DSH-001, Application for Disproportionate Share Hospital (DSH) Program", March 2007 edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: February 15, 2008
FILED WITH LRC: February 15, 2008 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: Stuart Owen or Barry Ingram

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes disproportionate share hospital (DSH) distribution provisions. Previously DSH distribution provisions were established in 907 KAR 1:013, Payments for hospital inpatient services and are now being separated into a stand-alone administrative regulation. Additionally, policy is amended to utilize more current data, previously 2003 data was used, to determine DSH distributions. The amendment is enacted to ensure compliance with the Centers for Medicare and Medicaid Services (CMS) evolved interpretation of disproportionate share hospital distribution requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure compliance with CMS's evolved interpretation of DSH distribution requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.639, 205.640, 205.641, and federal requirements by amending DSH distribution provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amends DSH distributions in accordance with KRS 205.639, 205.640, 205.641, and federal 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 administrative regulation which was previously contained in a larger-in-scope inpatient hospital reimbursement administrative regulation. The Department for Medicaid Services (DMS) is dividing the larger administrative regulation into three narrower-in-scope administrative regulations. This administrative regulation establishes DSH distribution provisions. Previously DSH distribution provisions were established in 907 KAR 1:013, Payments for hospital inpatient services and are now being separated into a stand-alone administrative regulation. The amendment will utilize more current data to determine DSH distributions and to ensure that DSH distribution methodologies are tailored to respective hospital types. Additionally, DSH distribution policy is being revised to comply with CMS's evolved interpretation of applicable requirements. An initial amendment was submitted to the Legislative Research Commission (LRC) on October 15, 2007; however did not include a methodology to establish outpatient indigent care cost in a hospital's DSH distribution as this amendment does. The amendment after comments corrects a discrepancy between the administrative regulation and the incorporated material.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with KRS 205.640 and with CMS's evolved interpretation of DSH distribution requirements. The amendment after comments is necessary to correct a discrepancy between the administrative regulation and the incorporated material.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.639, 205.640, 205.641, and federal requirements by amending DSH distribution provisions. The amendment after comments complies with the authorizing statutes by correcting a discrepancy between the administrative regulation and the incorporated material.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amends DSH distributions in accordance with KRS 205.639, 205.640, 205.641, and federal requirements. The amendment after comments complies with the authorizing statutes by correcting a discrepancy between the administrative regulation and the incorporated material.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect any in-state inpatient hospital which provides care to indigent individuals.

(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 administrative regulation establishes DSH distribution policy for the regulated entities rather than imposes mandates with associated costs. Regulated entities do not have to take any action to comply with the amendment after comments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation establishes DSH distribution policy for the regulated entities rather than imposes mandates with associated costs. No cost is imposed on the regulated entities as a result of the amendment after comments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation establishes DSH distribution policy for the regulated entities rather than imposes mandates with associated costs. The amendment will utilize more current data to determine DSH distributions and to ensure that DSH distribution methodologies are tailored to respective hospital types. An initial amendment was submitted to LRC on October 15, 2007; however did not include a methodology to establish outpatient indigent care cost in a hospital's DSH distribution as this amendment does. The amendment after comments corrects a discrepancy between the administrative regulation and the incorporated material.

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

(a) Initially: DMS expends $197 million ($137,072,600 federal funds and $59,927,400 state funds) annually on DSH distributions. There is no fiscal impact as a result of the amendment after comments and the change imposes no cost on the regulated entities.

(b) On a continuing basis: DMS expends $197 million ($137,072,600 federal funds and $59,927,400 state funds) annually on DSH distributions. There is no fiscal impact as a result of the amendment after comments and the change imposes no cost on the regulated entities.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation. The current fiscal year budget will not need to be adjusted as a result of the amendment after comments.

(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. The amendment after comments does not add or increase any fee.

(9) Tiering: Is tiering applied? DSH distributions conform with KRS 205.639 and 205.640 which establish tiered DSH distribution based on hospital type. The amendment after comments does not alter the tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Relevant provisions are established in KRS 205.639, KRS 205.640, KRS 205.641, 42 C.F.R. 412.106, 42 C.F.R. 412.320, 42 U.S.C. 1395ww(d), 42 U.S.C. 1396r-4(a).

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.639, 205.640, and 205.641 establish disproportionate

share hospital (DSH) provisions.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 447.272 limits DSH payments, in aggregate, to the federal share of the DSH limit pursuant to 42 U.S.C. 1396r-4(f), the hospital specific limit pursuant to 42 U.S.C. 1396r-4(g) or the institution for mental disease limit pursuant to 42 U.S.C. 1396r-4(h).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all inpatient hospitals which provide care to indigent individuals.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The initial amendment and amendment after comments are authorized by KRS 205.639, 205.640, 205.641, 42 C.F.R. 412.106, 42 C.F.R. 412.320, 42 U.S.C. 1395ww(d), 42 U.S.C. 1396r-4(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? This amendment is not expected to generate any additional revenue for state or local governments during the first year of implementation. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate any additional revenue for state or local governments during subsequent years of implementation. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(c) How much will it cost to administer this program for the first year? DMS expends $197 million ($137,072,600 federal funds and $59,927,400 state funds) annually on DSH reimbursement. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

(d) How much will it cost to administer this program for subsequent years? DMS expends $197 million ($137,072,600 federal funds and $59,927,400 state funds) annually on DSH reimbursement. DMS does not anticipate a fiscal impact as a result of the amendment after comments.

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

Revenues (+/-):

Expenditures (+/-):

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, and reporting requirements.

RELATES TO: KRS 199.011(7), 600.020(54), (55), 605.090(1)(b), (6), 605.120, 605.130, [~~605.160,~~] Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20)[~~(A)~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), [~~199.472(1),~~] 199.640(5), [~~and~~] 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, 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 program. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a [~~each~~] foster or adoptive parent applicant, an [~~and each~~] adult member of the applicant's household, and a caretaker relative. [~~KRS 199.472(1) requires the cabinet to establish criteria to be followed for the adoption of children.~~] KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including:

(1) KRS 605.120 by which the cabinet is authorized to establish a program for kinship care; and

(2) [~~the provision of~~] KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that [~~the applicant or~~] a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Adolescent member of the household" means a youth who:

(a) Resides in the home of an individual who applies for approval or has been approved to provide foster or adoptive services;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(2) "Adult member of the household" means an adult who:

(a) Resides in the home of an individual who applies for approval or has been approved to provide foster or adoptive services; and

(b) Is eighteen (18) years of age or older.

(3) "Applicant" means an individual who applies for approval as a foster or adoptive parent under:

(a) 922 KAR 1:350, Family Preparation; or

(b) 922 KAR 1:310, Standards for Child-Placing Agencies.

(4) "Caretaker relative" is a prospective kinship caregiver as defined in 922 KAR 1:130.

(5) "Child-placing agency" is defined by [~~at~~] KRS 199.011(7).

(6) [~~(5)~~] "Sexual abuse" is defined by [~~at~~] KRS 600.020(54).

(7) [~~(6)~~] "Sexual exploitation" is defined by [~~at~~] KRS 600.020(55).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants [~~Parents~~]. (1) An applicant, and each adult member of the household, shall submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for

each state of residence during the past five (5) years; and

(c) A criminal records check conducted by means of a fingerprint check of [by] the National Crime Information Database [Kentucky State Police and the Federal Bureau of Investigation, if the applicant:

1. Or adult household member has resided out-of-state within the ten (10) year period prior to the date of application; and

2. Offers a placement to a child made available through the cabinet or its agent].

(2) Prior to approval of an applicant, each adolescent member of the household shall submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or [and] adult member of the household who has been found by the cabinet to have:

(a) Committed sexual abuse or sexual exploitation of a child;

(b) Been responsible for a child fatality related to abuse or neglect;

(c) Abused or neglected a child within the seven (7) year period immediately prior to the application; or

(d) Had parental rights terminated [involuntarily].

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has [been convicted of] a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20)[(A)]; or

b. Physical abuse, battery, a [2.] drug, or alcohol[-related felony] within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect [for approval as a foster or adoptive parent]; or

(b) A child abuse or neglect check reveals [Cabinet records reveal] that the applicant, adolescent member of the household, or adult member of the household, has been found [by the cabinet] to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check by submitting to the cabinet:

(1) [Prior to approval of an applicant; and

(2) By submitting to the cabinet] A completed form, ["]DPP-157, Child Abuse or Neglect Check

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years["].

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) when a completed DPP-157 is submitted to the cabinet.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the requirements specified in 922 KAR 1:470, Section 3(4).

Section 5. Background Checks Required for a Caretaker Relative. (1) A caretaker relative, and each adult member of the household, shall submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) and in accordance with 922 KAR 1:130, by the:

1. Kentucky Justice and Public Safety Cabinet; and

2. Administrative Office of the Courts; and

(b) A child abuse or neglect check conducted by the cabinet.

(2) An adolescent member of a caretaker relative's household shall submit to a child abuse or neglect check conducted by the cabinet in accordance with 922 KAR 1:130. [Reports Relating to Committed Children. The cabinet shall disclose and receive information in accordance with KRS 605.090(1)(b) and (6).]

Section 6. [5.] Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child;

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has been:

1. Convicted of a nonviolent felony or misdemeanor;

2. Found [by the cabinet] to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. [6.] Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to a:

(a) Criminal records check as described in Section 2(1)(a) of this administrative regulation; and

(b) Child abuse or neglect check conducted by the cabinet.

(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (c) of this administrative regulation.

(b) If an adult becomes a new member of an approved caretaker relative's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or caretaker relative's [parent's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household.

Section 8. [7.] Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2(1) of this administrative regulation and the [a "]DPP-157[, Child Abuse or Neglect Check"] shall be maintained on behalf of each:

(a) Foster or adoptive parent; **and**

(b) [Applicant not approved as a foster or adoptive parent; and

(c)] Adult member of the applicant's household.

(2) A completed copy of each ["]DPP-157[, Child Abuse or Neglect Check"] shall be maintained on behalf of each adolescent member of the:

(a) Applicant's household; or

(b) Caretaker relative's household.

(3) A completed copy of the DPP-157 and criminal records check conducted pursuant to Section 5 of this administrative regulation shall be maintained for each:

1. Caretaker relative; and

2. Adult member of the caretaker relative's household.

Section 9. [8.] Incorporation by Reference. (1) "DPP-157, Child

Abuse or Neglect Check", edition 02/08 [~~December 2004~~"] is incorporated by reference.

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

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: February 15, 2008

FILED WITH LRC: February 15, 2008 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: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which the cabinet shall conduct background checks for foster or adoptive parents, caretaker relatives, and their household members and related reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check procedures and reporting requirements for the approval of prospective foster/adoptive parents and caretaker relatives for the provision of out-home-care services to children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by providing background check procedures and related reporting requirements for the approval of foster/adoptive parents and caretaker relatives.

(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 requirements of background checks for foster or adoptive parents and caretaker relatives to preserve the safety of children in said out-of-home care placements.

(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 clarifies Kentucky's child abuse and neglect check processes for other states, makes Kentucky's background check requirements consistent with the federal mandates governing approval of foster/adoptive homes, distinguishes background check requirements for caretaker relatives, makes technical corrections, and updates incorporated materials.

(b) The necessity of the amendment to this administrative regulation: Pub.L. 109-248, The Adam Walsh Child Protection and Safety Act of 2006, made changes to Title IV-E of the Social Security Act that include new state requirements regarding the approval of prospective foster/adoptive homes. If a prospective foster/adoptive parent (i.e., applicant) has lived in another state within the previous five years, the approving state agency must ensure the applicant submits to a child abuse and neglect check(s) conducted by the previous state(s) of residence. All applicants will be required to submit to a finger-print check of the Federal Bureau of Investigation's National Crime Information Database. The amendment is necessary to ensure federal compliance, provide clarification to other states, and avoid federal financial penalty to Kentucky's Title IV-E funding or a percentage of $81 million federal dollars provided to Kentucky's foster and adoptive programs and their proper administration.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by ensuring compliance with recently enacted federal mandates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring compliance with state and federal laws governing background checks for foster/adoptive parents and caretaker relatives and safeguarding children in said out-of-home-care placements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 4,170 privately and publicly approved foster/adoptive homes and approximately 4,900 approved caretaker relatives in Kentucky. On average, 1,711 background checks for foster/adoptive parents are processed monthly by the cabinet.

(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 prospective foster/adoptive parent will be required to submit to finger-print check of the National Crime Information Database for initial approval, upon adoption of this regulatory amendment. In addition, if the prospective foster/adoptive parent has resided in another state(s) in the previous five years, the prospective foster/adoptive parent will be required to submit to child abuse and neglect check(s) conducted by the other state(s) of residence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Private child-placing agencies will incur the fees charged for criminal background checks in the course of their consideration of a prospective foster/adoptive parent applicant. Prospective foster/adoptive parents and caretaker relatives will not incur any costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will benefit through their compliance with the federal mandate, Kentucky's avoidance of federal financial penalty to its Title IV-E funding, and enhanced safeguards for children in out-of-home care.

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

(a) Initially: Initial costs will be offset by the avoidance of federal financial penalty to Kentucky's Title IV-E funding.

(b) On a continuing basis: Ongoing costs will be offset by the avoidance of federal financial penalty to Kentucky's Title IV-E funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and State General Fund support Kentucky's foster/adoptive parents and related administrative support. The Temporary Assistance for Needy Families Block Grant also supports the consideration of caretaker relatives.

(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 increases in fees or funding to implement this administrative regulation due to the avoidance of federal financial penalty.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish or increase any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering will not be applied as this administrative regulation will be implemented statewide in the same manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20)

2.State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.150.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)

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 imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household

member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the Cabinet reveals that a household member, age twelve (12) or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements have been imposed in Kentucky for the safety of the children in foster or adoptive care.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(4), 199.640(5), 605.150, 42 U.S.C. 671(a)(20), 45 C.F.R. 1356.30.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new state or local revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new state or local revenues.

(c) How much will it cost to administer this program for the first year? Additional funding will be required during the first year to ensure compliance with federal mandates governing the approval of prospective foster/adoptive parents and avoid related federal financial penalty.

(d) How much will it cost to administer this program for subsequent years? Addition funds will be required during subsequent years to maintain compliance with federal mandates governing the approval of foster/adoptive parents.

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
(Amendment)

103 KAR 3:010. General Administrative Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 139.550, 139.560, 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 160.613-160.617, 209.160, 224.01-310(1), 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120.

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; [~~and~~]
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(5) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; [~~and~~]
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(6) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee; and
(f) Transient room; and
(g) Limited liability entity [~~Rental~~].

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use taxes, consumer's use, motor vehicle tire fee, [~~and~~] transient room, and limited liability entity [~~rental~~] tax accounts.

(8) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation, sales and use taxes, consumer's use, motor vehicle tire fee, [~~and~~] transient room, and limited liability entity [~~rental~~] tax accounts.

(9) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing" shall be used by individuals to request receipt of copies of ordinary administrative regulations filed with the Legislative Research Commission by the Department of Revenue.

(10) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(11) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(12) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectibility or doubt as to liability.

(13) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(14) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(15) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(16) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(17) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(18) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(19) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(20)[~~(18)~~] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property

if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(21)[~~(19)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(22)[~~(20)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Revenue Lien", shall be presented to anyone who requests to have the Department of Tax subordinate its lien position to a new mortgage.

(23)[~~(21)~~] Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property can be sold.

(24)[~~(22)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(25)[~~(23)~~] Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer or LLC Manager ", shall be presented to the corporate officers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers.

(26)[~~(24)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(27)[~~(25)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(28)[~~(26)~~] Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(29)[~~(27)~~] Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(30)[~~(28)~~] Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(31)[~~(29)~~] Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(32)[~~(30)~~] Revenue Form 12A513, "Corporation Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state.

(33)[~~(31)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(34)[~~(32)~~] Revenue Form 12A517, "Notice of State Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(35)[~~(33)~~] Revenue Form 12A518, "Certificate of Release of Tax Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(36) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(37)[~~(34)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(38)[~~(35)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(39)[~~(36)~~] Revenue Form 12A639, "Statement of Financial Condition for Business", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(40)[~~(37)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(41)[~~(38)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(42) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(43)[~~(39)~~] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(44) Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(45)[~~(40)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(46)[~~(41)~~] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(47)[~~(42)~~] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(48)[~~(43)~~] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the taxpayer and the auditor to acknowledge payment of taxes determined to be tentatively due at the time of an audit.

(49)[~~(44)~~] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(50)[~~(45)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(51)[~~(46)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(52)[~~(47)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(53)[~~(48)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(54)[~~(49)~~] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties

consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(55)[~~(50)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", shall be used as instructions for taxpayers who submit tax records in an electronic format.

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

(a) Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January, 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January, 2008 [~~August, 2005~~];

(d) Revenue Form 10A100, "Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(e) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", March, 2007 [~~August, 2006~~];

(f) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", March, 2007 [~~November, 2006~~];

(g) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(h) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", March, 2007 [~~June, 2005~~];

(i) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing", August, 2003;

(j) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", December, 2007 [~~October, 2006~~];

(k) Revenue Form 12A012, "Receipt of Seized Property", November, 2006;

(l) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", August, 2004;

(m) Revenue Form 12A104, "Notice of Seizure", October, 1982;

(n) Revenue Form 12A107, "Notice of Sale", January, 2000;

(o) Revenue Form 12A109-1, "Release of Bank Levy", September, 2004;

(p) Revenue Form 12A109-2, "Release of Levy", January, 2000;

(q) Revenue Form 12A109-3, "Release of Levy", January, 2008;

(r) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September, 2004;

(s) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January, 2008;

(t)[~~(r)~~] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June, 2006;

(u)[~~(s)~~] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June, 2006;

(v)[~~(t)~~] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October, 2006;

(w)[~~(u)~~] Revenue Form 12A503, "Application for Specific Lien Release", October, 2006;

(x)[~~(v)~~] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June, 2003;

(y)[~~(w)~~] Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer or LLC Manager", June, 2003;

(z)[~~(x)~~] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June, 2003;

(aa)[~~(y)~~] Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November, 2006;

(bb)[~~(z)~~] Revenue Form 12A508-1, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(cc)[~~(aa)~~] Revenue Form 12A508-2, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(dd)[~~(bb)~~] Revenue Form 12A508-3, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(ee)[~~(cc)~~] Revenue Form 12A508-4, "Notice of Tax Due", January, 2008 [~~February, 2003~~];

(ff)[~~(dd)~~] Revenue Form 12A513, "Corporation Nexus Questionnaire", October, 2006;

(gg)[~~(ee)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(hh)[~~(ff)~~] Revenue Form 12A517, "Notice of State Tax Lien", October, 2004;

(ii)[~~(gg)~~] Revenue Form 12A518, "Certificate of Release of Tax Lien", January, 2008 [~~October, 2004~~];

(jj) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January, 2008;

(kk)[~~(hh)~~] Revenue Form 12A638, "Statement of Financial Condition for Individuals", July, 2004;

(ll)[~~(ii)~~] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", August, 2004;

(mm)[~~(jj)~~] Revenue Form 12A639, "Statement of Financial Condition for Businesses", August, 2004;

(nn)[~~(kk)~~] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August, 2004;

(oo)[~~(ll)~~] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September, 2004;

(pp) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January, 2008;

(qq)[~~(mm)~~] Revenue Form 12B020, "Notice of Levy", September, 2004;

(rr) Revenue Form 12B020-2, "Notice of Levy", January, 2008;

(ss) [~~(nn)~~] Revenue Form 21A020, "Request for Copy of Tax Refund Check", October, 2006;

(tt)[~~(oo)~~] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December, 2006;

(uu)[~~(pp)~~] Revenue Form 31A001, "Vendor Contact Authorization", July, 2006;

(vv)[~~(qq)~~] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July, 2006;

(ww)[~~(rr)~~] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July, 2006;

(xx)[~~(ss)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July, 2006;

(yy)[~~(tt)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July[~~March~~], 2006;

(zz)[~~(uu)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July, 2006;

(aaa)[~~(vv)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", May, 1985;

(bbb)[~~(ww)~~] Revenue Form 31A725, "Statute of Limitations Agreement", July, 2006; and

(ccc)[~~(xx)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", June, 2006 [~~July, 2005~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street [~~200 Fair Oaks Lane~~], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

WILLIAM M. COX, Sr., Commissioner

APPROVED BY AGENCY: February 8, 2008

FILED WITH LRC: February 11, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 March 31, 2008. 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: R. Mack Gillim, Executive Director, Office of Processing and Enforcement, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort,

Kentucky 40620, phone (502) 564-3228, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: R. Mack Gillim

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(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 corrects the existing regulation to add new or update existing Department of Revenue forms.

(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change to existing forms must result in an amendment of the associated regulation to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(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 actions will have to be taken by the taxpayers or local governments to comply with 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): There would be no cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and instructions will enable taxpayers to comply with tax laws.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

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 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 131.130(3)

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 expenditures or revenue for the Commonwealth or local government agency.

(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.

(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.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:196. Continuing professional development for engineers.

RELATES TO: KRS 322.290(16)

STATUTORY AUTHORITY: KRS 322.290(16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(16) requires the board to adopt a program of continuing education for professional engineers. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(16) for professional engineers.

Section 1. Definitions. (1) "Continuing professional development" or "CPD" means participation in activities beyond the basic educational requirements that;

(a) Provide specific content to improve the professional engineer's competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional engineer's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Which meet the requirements established by the provisions of this administrative regulation.

(2) "Dual licensee" means a person licensed as both a professional engineer and a professional land surveyor.

(3) "Licensee" means a person licensed as a professional engineer.

(4) "Professional development hour" or "PDH" means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license.

Section 2. Program Structure. (1) Except as provided in Section 6 of this administrative regulation, a licensee shall complete a minimum of thirty (30) PDH units each reporting period.

(2) If a licensee exceeds the requirement, a maximum of fifteen (15) PDH units may be carried forward to the next reporting period.

(3) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the land surveyor requirements under 201 KAR 18:192 if the PDH units meet the requirements of that administrative regulation.

(4) Failure to earn the required PDH units shall constitute unprofessional conduct.

Section 3. Criteria for Professional Development. (1) Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the professional engineer.

(2) PDH units may be earned by successful completion of the following activities:

[~~(a) Engineering educational programs or activities not requiring board audit review. An educational program from any of the following providers shall be deemed to be relevant to the practice of engineering and shall be approved without further review by the board if the program is an engineering educational program sponsored or approved by:~~

~~1. A provider included on the National Council of Examiners for Engineering and Surveying's (NCEES) Registered Continuing Education Providers Program; or~~

~~2. The National Society for Professional Engineers, or any of its affiliated state associations; or~~

~~3. Any university or college with an ABET accredited engineering program;~~

~~(b) Engineering educational programs or activities subject to board audit review, which programs or activities meet the criteria of "Continuing professional development" as that term is defined in Section 1 of this administrative regulation, and fall into one (1) or more of the following categories:~~]

a.[~~1.~~] College courses;

b.[~~2.~~] Continuing education courses;

c.[~~3.~~] Correspondence, televised, videotaped, distance learning, and other short courses/tutorials;

d.[~~4.~~] Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences;

e.[~~5.~~] Teaching or instructing in paragraphs (a) through (d) of this subsection;

f.[~~6.~~] Authoring published papers, articles, books, or accepted licensing examination items;

g.[~~7.~~] Active participation in professional or technical societies as authorized in Section 4(7)

(3)[~~(2)~~] In order to qualify for credit, activities described in subsections[~~subsection~~] (1) and (2) of this section shall:

(a) Be relevant to the practice of engineering;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise; and

(e) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(4)[~~(3)~~] CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(5)[~~(4)~~] PDH units shall be converted as follows:

(a) One university semester hour shall equal forty-five (45) PDH units.

(b) One university quarter hour shall equal thirty (30) PDH units.

(c) For teaching any activity in Section 3(2)[~~(1)~~], multiply the number of PDH units earned by participants for that activity by two (2).

(d) Each published paper, article, or book shall equal ten (10) PDH units.

(e) Active participation in professional or technical society shall equal two (2) PDH units for each organization.

Section 4. Determination of Credit. (1) Credit for college or university courses shall be based upon course credit established by the college or university.

(2) Credit for qualifying seminars and workshops shall be based upon one (1) PDH for each fifty (50) minutes of instruction or presentation.

(3) Attendance at qualifying programs presented at professional or technical society meetings shall earn PDH units for the actual time of each program.

(4) Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.

(5) Teaching credit shall be valid for teaching a course or seminar for the first time only.

(6) Credit for active participation in professional or technical societies shall require that the licensee serve as an officer committee chair of the organization. PDH units shall not be earned until the end of each year of service is completed.

Section 5. Recordkeeping. (1) The licensee shall be responsible for maintaining records used to support PDH units claimed. Records required include:

(a) A log showing the date of the activity, sponsoring organization, location, activity title, description, presenter's name, and PDH units earned; and

(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

Section 6. Exemptions and Extensions. (1) A licensee shall be exempted for the calendar year in which initially licensed by the board.

(2) An individual who has selected inactive or retired status shall be exempt from the requirements of this administrative regulation.

(3) A licensee who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the reporting period in which the disability, illness, or extenuating circumstance occurs.

(4) The board may grant an extension of time to fulfill the CPD requirement for an extenuating circumstance.

(5) An exemption or extension request shall be made in writing with supporting documentation.

Section 7. Reinstatement. Before a license is reinstated by the board, a former licensee shall earn the PDH units required for each reporting period the license was revoked, suspended, or expired, up to a maximum of sixty (60) PDH units.

Section 8. Reporting. (1) On the biennial renewal form, a licen-

see shall certify whether or not the licensee has met the requirements of this administrative regulation.

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the CPD requirements shall be determined through a random selection process where a computer program shall select five (5) percent of the licensees filing biennial renewal forms on or before September 1 of that year.

(2) A licensee who is the subject of an investigation pursuant to KRS 322.190 shall be subjected to the audit requirements of this section.

(3) A licensee selected for audit shall provide the board with documentation as described in Section 5 of this administrative regulation within thirty (30) days of the board's request.

(4) If the board disallows credit due to the activity not meeting the requirements of Section 3(2) of this administrative regulation, or if the PDH units reported are less than thirty (30), the licensee shall have 180 calendar days after notification to substantiate the original claim or earn other PDH units to meet the requirement.

(5) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the licensee to disciplinary action.

(6) An audit resulting in a determination of noncompliance shall subject the licensee to an automatic audit the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

Section 10. Delegation. The board may delegate its authority in this administrative regulation to a board committee or the executive director.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: February 14, 2008

FILED WITH LRC: February 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008 at 9:30 a.m., local time, at 160 Democrat Drive, 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 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 March, 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for a continuing education program for professional engineers.

(b) The necessity of this administrative regulation: KRS 322.290(16) required the board to establish a continuing education program for professional engineers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. The regulation established the requirements for a program mandated by KRS 322.290(16).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will assist board staff in administering the program by establishing the requirements of the program. These requirements will also allow licensees to know what is required of them.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes language which exempts educational programs from certain providers from board audit review.

(b) The necessity of the amendment to this administrative regulation: The existing language creates the perception of preferential treatment for certain providers. Other providers are now requesting to be added to the list. With thousands of providers in the United States, this regulation could soon become unwieldy. By removing the language, all providers are treated the same.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to the administration of the continuing education program for engineers which is required by KRS 322.290(16).

(d) How the amendment will assist in the effective administration of the statutes: It will prevent the potential for thousands of providers asking to be included in the current language. Such a workload would not allow the effective administration of the program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation does not affect businesses, organizations, or state and local governments. It affects the approximately 11,000 licensed professional engineers who now have to obtain continuing education as mandated by KRS 322.290(16).

(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 necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will have no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will allow staff to administer the program in a more efficient manner and be less confusing to licensees.

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

a. Initially: $0

b. On a continuing basis: $0 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A, there is no cost to the amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this amendment should not disproportionately affect any particular group of people.

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 State Board of Licensure for Professional Engineers and Land Surveyors

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(16)

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 amendment will have no cost and generate no revenue.

(a) How much revenue will this administrative regulation generate for the state or local government agency (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 agency (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 cost of the amendment is zero.

(d) How much will it cost to administer this program for subsequent years? The cost of the amendment is zero.

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 Real Estate Appraisers Board
(Amendment)

201 KAR 30:050. Examination, continuing education, and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience, examination of applicants, and continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, continuing education, and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) Scores from the examinations shall be acceptable for two (2) years.

Section 2. [~~Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 180 hours of approved instruction.~~

~~(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction.~~

~~(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) hours of approved instruction.~~

~~(4) An applicant for a license as an associate real property appraiser shall have completed seventy-five (75) hours of approved instruction.~~

~~(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.~~

~~(b) Required hours of instruction shall have been completed prior to examination.~~

~~(6) The required hours of instruction for every applicant shall:~~

~~(a) Include at least fifteen (15) hours related to basic income; and~~

~~(b) Be completed in an orderly progression of appraisal concepts and coursework commencing with basic appraisal courses and progressing to advanced courses.~~

~~1. The initial instructional course shall cover basic principles of appraising.~~

~~2. The fifteen (15) hours of instruction on the Uniform Standards of Professional Appraisal Practice required by paragraph 7 of this section, shall not be taken until after the instructional course covering basic principles of appraising has been completed.~~

~~(7) The 15-hour National Uniform Standards of Professional Appraisal Practice Course.~~

~~(a) An applicant shall take the 15-Hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent, and pass the associated 15-hour National Uniform Standards of Professional Appraisal Practice Course Examination as approved by the Appraiser Standards Board of the Appraisal Foundation.~~

~~(b) Equivalency for the 15-hour National Uniform Standards of Professional Appraisal Practice Course shall be determined though the Appraiser Qualifications Board Course Approval Program or by an alternative method established by the Appraiser Qualifications Board.~~

~~(c) Uniform Standards of Professional Appraisal Practice prelicensing education credit shall only be awarded when the class is instructed by an Appraiser Qualifications Board Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.~~

~~Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:~~

~~(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040;~~

~~(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;~~

~~(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and~~

~~(4) Include coverage of:~~

~~(a) Influences on real estate value;~~

~~(b) Legal consideration in appraisal;~~

~~(c) Types of value;~~

~~(d) Economic principles;~~

~~(e) Real estate markets and analysis;~~

~~(f) Valuation process;~~

~~(g) Property description;~~

~~(h) Highest and best use analysis;~~

~~(i) Appraisal statistical concepts;~~

~~(j) Sales comparison approach;~~

~~(k) Site value;~~

~~(l) Cost approach;~~

~~(m) Income approach, including:~~

~~1. Gross rent multiplier analysis;~~

~~2. Estimation of income and expenses;~~

~~3. Operating expense ratios; and~~

~~4. Direct capitalization;~~

~~(n) Valuation of partial interests;~~

~~(o) Appraisal standards and ethics; and~~

~~(p) Narrative report writing.~~

~~Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:~~

~~(a) It is approved by the board;~~

~~(b) It complies with the provisions of this administrative regulation;~~

~~(c) It is documented by the applicant;~~

~~(d) It is a course that requires at least fifteen (15) hours of instruction; and~~

~~(e) The applicant has passed a written examination of the subject matter of the course.~~

~~(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.~~

~~(b) A teacher of appraisal courses who wishes to receive credit shall:~~

~~1. File a written request with the board for receipt of credit; and~~

~~2. Document the appraisal courses taught by title, date, place taught, and length of course.~~

~~(3) The board shall grant credit for courses to an applicant if:~~

~~(a) The applicant received credit from the course provider by challenge examination;~~

~~(b) The credit was granted by the course provider prior to July 1, 1990; and~~

~~(c) The board is satisfied with the quality of the challenge examination administered by the course provider.~~

~~Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:~~

~~(a) Colleges or universities;~~

~~(b) Community or junior colleges;~~

~~(c) Real estate appraisal or real estate related organizations;~~

~~(d) State or federal agencies or commissions;~~

~~(e) Proprietary schools; or~~

~~(f) Other providers.~~

~~(2) A provider shall be approved by the board if the provider:~~

~~(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and~~

~~(b) Is determined by the board to be a qualified appraisal education provider.~~

~~Section 6.~~] Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(d) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(e) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

(f) Real property appraisal assignments completed for experience credit shall be completed:

1. In compliance with the requirements of USPAP as incorporated in 201 KAR 30:040 [~~201 KAR 30:050~~] and defined in KRS 324.010(7); and

2. Under the supervision of a licensed or certified real property appraiser.

(g) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in 201 KAR 30:030 Section 1(2), (3), or (4).

(2)(a) An applicant shall verify experience credit in a form approved by the board.

(b) The board may request reports, file memoranda, and other documentation, if necessary to confirm the applicant's appraisal experience.

(3) The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation in accordance with the exception established in the Jurisdictional Exception Rule of USPAP.

(4) A jurisdictional exception from the requirements of USPAP for the review of appraisals for applications and experience audits under this administrative regulation.

Section 3.[~~Section 7.~~] Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:

(1) Complete fourteen (14) hours of approved continuing education each license year; and

(2) Furnish the board with proof of compliance.

Section 4.[~~Section 8.~~] Continuing Education. (1) Continuing education credit may be granted for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(5)(a) All credential holders shall successfully complete the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, at a minimum of every (2) two years.

(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.

(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(6) The board shall defer continuing education requirements for up to 180 days for credential holders returning from active military duty.

[~~Section 9. Incorporation by Reference. (1) "Appraisal Education Provider Application Form" (2000) is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Suite 204, Lexington, Kentucky 40511, (859) 543-8943, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

J.W. GRABEEL, Chair

APPROVED BY AGENCY: February 14, 2008

FILED WITH LRC: February 14, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2008 at 1 p.m., at 2624 Research Park Drive, Suite 204 Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 21, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. 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 writ-

ten comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the examination, continuing education, and experience requirements for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the examination, education, and experience requirements for certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the examination, continuing education, and experience requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the examination, continuing education, and experience requirements for applicants.

(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 deletes education requirements that have been superseded by 201 KAR 30:190.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to delete education requirements that have been superseded by 201 KAR 30:190.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary for certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by clearly identifying the educational requirements for applicants and renewal of certification for certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately three hundred persons currently training for certification by the board and 1,800 certificate holders.

(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 applicants will be required to meet the requirements of 201 KAR 30:190.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, 3339 and 12 C.F.R. 225.64, 225.65.

(2) State compliance standards. This administrative regulation institutes the education, experience and continuing education requirements that meet the standards promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

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

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 Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Licensure and Certification for Dietitians and Nutritionists
(Amendment)

201 KAR 33:020. Renewals.

RELATES TO: KRS 310.050

STATUTORY AUTHORITY: KRS 310.041, 310.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050 provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, pay to the board the renewal fee established by 201 KAR 33:010 for the renewal of the license or certificate.

(2) If a license or certificate is not renewed before November 1 of each year it shall expire.

(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010.

(2) A licensee or certificate holder may continue to practice during the sixty (60) day grace period; however, upon request of employer, said individual must present evidence of a valid pre-existing license or certificate.

(3) Persons requesting renewal of their certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation, a licensee or certificate holder shall:

(1) No longer be eligible to practice in the Commonwealth;

(2) Be sent notice at the last known address available to the board that license or certificate has been revoked and that he shall cease and desist practice.

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate which has been automatically revoked due to failure to renew may be reinstated if the licensee or certificate holder has:

(1) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(2) Documented that he has complied with the continuing education requirements established by 201 KAR 33:030.

CHERYL BENTLEY, Chairperson

APPROVED BY AGENCY: February 14, 2008

FILED WITH LRC: February 14, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2008, at 1 p.m., Eastern Time in the Board Conference Room B, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, Kentucky. Individuals interested in attending 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person indicated below.

CONTACT PERSON: Ms. Karen Lockett, Finance and Administration Cabinet, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 222, fax (502) 696-5890.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karen Lockett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires documentation of a pre-existing license during a 60 day grace period.

(b) The necessity of this administrative regulation: KRS 310.041 and KRS 310.050 authorizes the board to promulgate administrative regulations establishing the criteria for the required for re-licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 310.041 and 310.050 authorizes the board to establish by administrative regulation the type of documentation required to continue to work while awaiting re-licensure during the grace period.

(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 by ensuring qualified individuals are working while waiting on relicensure.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation changes the documentation required to be presented to current employer.

(b) The necessity of this administrative regulation: KRS 310.041 and 310.050 authorizes the board to promulgate administrative regulations establishing the criteria for renewal and it closes a loophole allowing someone to take advantage of the grace period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 310.041 and 310.050 authorizes the board to establish by administrative regulation the documentation required to be presented to an employer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration by specifying that individuals utilizing the grace period document that they were properly licensed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently has 1,019 persons licensed. The board annually receives 85-100 new applications for licensure.

(4) Provide an analysis of how the entities 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: It requires individuals who are seeking renewal during the grace period to maintain documentation of pre-existing licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There are no additional costs for complying with the amendment.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by application fees already paid by applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in the fees is presently anticipated by reason of this amendment.

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all applicants who seek licensure.

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? N/A

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041 and 310.050 authorizes the board to promulgate administrative regulations establishing the criteria for the required for re-licensure and this amendment requires the individual to present documentation of pre-existing licensure to continue working while awaiting renewal during the grace period.

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. N/A

(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:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

RELATES TO: KRS 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. This administrative regulation is necessary to specify [~~legal commercial fishing waters and~~] restrictions on the use of gill and trammel nets.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

(3) "Permit" means a special commercial fishing permit.

(4) "Roe fish" is defined in 301 KAR 1:155.

(5) "Rough fish" is defined by KRS 150.010(32).

(6)[~~(5)~~] "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) For the 2008-2009 special commercial fishing season, the department shall not issue more than twenty-five (25) permits. [~~The department shall issue a permit only to a person who is eligible as specified in this section and had previously purchased a permit for the 2003 through 2005 special commercial fishing season.~~

~~(3) For the 2007-2008 special commercial fishing season, the department shall not issue more than twenty-six (26) permits. Thereafter, the number of permits issued shall be reduced through attrition to a maximum of twenty-five (25).~~]

(a) A permit holder shall submit a completed permit application to the department, along with permit fees as stipulated in 301 KAR 3:022 on or before November 1 to retain their permit privilege. Mailed permit applications shall be postmarked on or before November 1. [~~A permit holder shall purchase a permit annually to retain the privilege to purchase a permit in following years;~~]

(b) The ability to purchase a permit shall only be transferred to immediate family members.[;]

(c) New permits shall not be issued until the total number of permits has been reduced to less than twenty-five (25).[;]

(d) A lottery drawing shall be used to select new permittees once the number of permits has been reduced to less than twenty-five (25).

1. A person wishing to apply for a vacant permit shall submit a completed Application for a Special Commercial Fishing Permit to the department, [~~an application~~] along with permit fees, as stipulated in 301 KAR 3:022, on or before November 1 [~~to the department prior to October 1~~] of the fishing season to be included in the lottery drawing. Permit applications mailed to the department shall be postmarked on or before November 1.

2. No more than seven (7) of the maximum number of permits issued shall be nonresident permits.

Section 3. A person shall have in [~~who has in his or her~~] possession a valid permit and a commercial fishing license while using [~~may use~~] a gill net or a trammel net to take rough fish:

(1) From November 1 through March 31 at both Kentucky and Barkley lakes.

(2) In the portions of Kentucky and Barkley lakes open to commercial fishing as specified in 301 KAR 1:150.

Section 4. A person using a gill net or a trammel net in the waters specified in Section 3 of this administrative regulation shall:

(1) Before fishing, and after meeting requirements in Section 2 of this administrative regulation apply for a permit by submitting a completed Application for a Special Commercial Fishing Permit that shall be provided by the department.

(2) Have the permit in [~~his or her~~] possession while:

(a) Fishing with a gill net or a trammel net;

(b) Transporting a gill net or a trammel net; or

(c) Selling fish taken with a gill net or a trammel net;

(3) Tag a gill net or a trammel net as specified in KRS 150.175(1)(d);

(4) Not use a gill net or a trammel net with a bar mesh size smaller than three and five-tenths (3.5) [~~one-half (3-1/2)~~] inches or larger than four and five-tenths (4.5) [~~one-half (4-1/2)~~] inches, except:

(a) A whip set may have a minimum bar mesh size of three (3) inches; and

(b) Beginning on November 15 and running through March 31 at both Kentucky and Barkley lakes, gill and trammel nets with a bar mesh size larger than [~~from~~] four and five-tenths (4.5), but less than or equal to [~~one-half (4-1/2) to~~] six (6) inches may be used in stationary sets only.[;]

(5) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(6) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(7) Not leave whip sets unattended;

(8) Affix a decal supplied by the department to each side of the boat or motor used [~~he uses~~] for fishing under this permit so that the decal is clearly visible while [~~the boat is used for~~] fishing with a gill net or a trammel net;

(9) Not dispose of any commercially caught rough fish at public boat launch areas; and

(10) Not harvest paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season that are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin. [~~Adhere to the following minimum eye to fork length size limit for paddlefish~~

~~(a) From November 1, 2007 to March 31, 2008 at Kentucky and Barkley lakes the minimum eye to fork length size limit for paddlefish shall be thirty-seven (37) inches; and~~

~~(b) Thereafter, the minimum eye-to-fork length size limit for paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season shall be thirty-eight (38) inches.~~]

Section 5. The permit holder may be accompanied by one (1) unlicensed helper, who shall be:

(1) In the same boat with the permit holder while fishing with a gill net or a trammel net; or

(2) Accompanied by the permit holder while transporting or selling fish taken under the permit.

Section 6. The permit holder shall:

(1) Maintain an accurate record of daily fishing activity; and

(2) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.

Section 7. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be permitted to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a commercial roe fish harvester permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all commercial rose fish harvester permit reporting requirements as stipulated in 301 KAR 1:155, Section 4(7).

Section 8. Permit Revocation and Renewal.

(1) The department shall revoke or not renew the permit for a period of two (2) years, of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a commercial roe dealer permittee or who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Placement of commercial fishing gear in a restricted area;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing; or

(e) Nonreporting or falsifying of commercial harvest data.

(2) A person whose permit has been revoked or not renewed shall be eligible to enter the lottery drawing described in Section 2 of this administrative regulation following the revocation period only if a permit is available based on the twenty-five (25) permit restriction.

Section 9.[~~Section 8.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for a Special Commercial Fishing Permit, 2007;

(b) Monthly Report of Commercial Fish Harvest in Kentucky, 2007; [~~and~~]

(c) Daily Commercial Roe Harvest Report, 2008; and

(d) List of commercial fisherman who remain eligible to purchase a Special Commercial Fishing Permit for the 2008-2009 season, 2008. [~~List of commercial fishermen who purchased a special commercial fishing permit during the 2003 through 2005 fishing seasons.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARACHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five (5) business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

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 establishes the procedures for taking rough fish during the special commercial fishing season from both Kentucky and Barkley lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fishery resources and regulate the taking of rough fish from Kentucky and Barkley lakes by use of gill nets and trammel nets during the special commercial fishing season.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the requirements for commercial fishing during the special commercial fishing season at Kentucky and Barkley lakes.

(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 clarifies that a person who possesses a special commercial fishing permit shall not be required to purchase a commercial roe fish harvester permit to harvest paddlefish from Kentucky and Barkley lakes during the special commercial fishing season. A person shall be required to follow all commercial roe fish harvester reporting requirements established in 301 KAR 1:155 if they harvest paddlefish from Kentucky and Barkley lakes. This amendment also clarifies when a person shall have their application submitted to the department to renew or purchase a special commercial fishing license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that a special commercial fishing permittee is not required to purchase a commercial roe fish harvester permit in order to harvest paddlefish from Kentucky and Barkley lakes during the special commercial fishing season. They will need to follow all commercial roe fish harvester reporting requirements established in 301 KAR 1:155. Also, this amendment clarifies the dates that special commercial fishing permit applications shall be submitted to the department.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 25 special commercial fishing permittees that may be affected by this amendment. Not all 25 permittees harvest paddlefish from Kentucky and Barkley lakes during the special commercial fishing season.

(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: Special commercial fishing permittees shall have to follow the reporting requirements of a commercial roe fish harvester permittee if they harvest paddlefish roe from Kentucky and Barkley lakes during the special commercial fishing season. Also, special commercial fishing permittees will now have to have their application to renew their permit submitted to the department by November 1 to retain their permit privileges.

(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 costs incurred to the special commercial fishing permittees as a result of complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, special commercial fishing permittees will be able to continue harvesting paddlefish from Kentucky and Barkley lakes during the special commercial fishing season without the need to purchase an additional permit.

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

(a) Initially: There will be no cost to the agency as a result of this administrative regulation.

(b) On a continuing basis: There will be no cost 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 is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all special commercial fishing permittees were 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 Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement 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 150.025 authorizes the department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cost of the permit is $900 for nonresidents and $600 for residents. There currently are a maximum of 7 nonresidents and 18 resident permit holders that generate a total of $17,100.

(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? Special commercial fishing permit holders are required to purchase permits on an annual basis. This regulation will generate approximately $17,100 in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate, by administrative regulations, the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. This administrative regulation is necessary to specify the legal methods that may be used by commercial fishermen to harvest rough fish. [~~It is necessary to accurately describe the gear allowed in commercial fishing so that the proper size and species of fish can be harvested, the sport fish populations are not adversely affected and perpetuation of the fishery resource is assured. This amendment is necessary to readjust the hoop net mesh size on the Ohio River for a two (2) year transition period.~~]

Section 1. Definitions. (1) "Bar mesh size" is defined in 301 KAR 1:140.

(2) "Commercial gear tag" means a metal tag, provided by the department, that shall be attached to legal commercial fishing gear as stipulated in this administrative regulation.

(3) "Flag net" means a gill or trammel net that is anchored on one (1) end, while the other end of the net is unanchored, allowing this end of the gill or trammel net to float freely. [~~The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, subsections (5), (6), (7) and (8).~~

~~Section 2. All lines and mesh shall be made of linen, cotton or flexible synthetic fiber only. All mesh shall be measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.~~]

Section 2.[~~Section 3.~~] The following gear is the only commercial gear that shall be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen:

(1) Hoop nets, wing nets, straight lead nets, or heart lead nets. [~~Hoop net, wing net, straight lead net, heart lead net.~~]

(a) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except in the Ohio River, the Mississippi River, those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum bar mesh size shall be one (1) inch.

(b) Hoops may be any size or shape or material.

(c) Maximum length of each lead or wing shall be sixty (60) feet.

(d) Wings and leads must be constructed of multifilament natural or synthetic material only.

(e) Netting used for wings and leads shall be constructed of twine no smaller than number six (#6) nylon or equivalent, having a breaking strength of fifty-five (55) pounds or greater.

(f) Wings and leads may be of knotted or knotless construction and shall have a bar mesh size no larger than one (1) inch.

(g) Hoop nets, wing nets, straight lead nets or heart lead nets shall be fished as individual nets. Wings or leads shall not be tied

together so as to become continuous multiple net units.

(h) Wings and leads shall be used only to lead fish into the hoop net.

(i) One (1) commercial gear tag shall be attached to the first hoop of each net.

(2) Gill nets or trammel nets. A gill net or trammel net: [~~Gill net or trammel net.~~]

(a) May be used only in the Ohio and Mississippi Rivers and permanent overflow lakes adjacent to the Ohio and Mississippi Rivers that may be accessed from either river by a boat during high flow conditions, except as prohibited on department Wildlife Management Areas in 301 KAR 4:050 and 301 KAR 4:020 [~~overflow lakes directly connected with each river~~] or as specified in 301 KAR 1:140.

1. The minimum bar mesh size to be used in the Mississippi River and its adjacent permanent overflow lakes shall be three (3) inches.

2. The minimum bar mesh size to be used in the Ohio River and its adjacent permanent overflow lakes shall be four (4) inches, except that from April 25 through October 31, a commercial fisherman shall only use gill or trammel nets with a bar mesh size ranging from four (4) to four and five-tenths (4.5) inches. [~~Minimum mesh size is three (3) inches in the Mississippi and its overflow lakes and four (4) inches in the Ohio River and its overflow lakes.~~]

(b) May be fished weighted or as a flag net.

(c) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(3) Commercial trotlines. A commercial trotline: [~~Commercial trotline.~~]

(a) Shall have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.

(b) Shall have one (1) commercial gear tag attached.

(c) Shall be no longer than 3,000 feet, including staging, and shall be fished separately, not tied together in a continuous line.

(4) Seines. A seine:[~~Seine.~~]

(a) Shall have a maximum bar mesh size of one (1) inch and may be of knotted or knotless construction. Knotted netting shall be constructed of twine no smaller than number 6 (#6) nylon or equivalent having a breaking strength of fifty-five (55) pounds or greater, and knotless netting shall be constructed of twine no smaller than #147 nylon or equivalent having a breaking strength of fifty (50) pounds or greater.

(b) Shall be constructed of multifilament natural or synthetic material only.

(c) Shall have both float and lead lines.

(d) Shall have wood, fiberglass, or metal poles or brailes attached at each end.

(e) Shall be attended by persons pulling the seine[~~siene~~] by hand through the water for the entrapment of fish.

(f) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(5) Slat trap baskets. A slat trap basket:[~~basket~~].

(a) Shall have no wire or other mesh added to any part of trap.

(b) Shall have at least two (2) openings left between slats no smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings shall not be restricted by cross-bracings to a length shorter than eight (8) inches.

(c) Shall be no larger than two (2) feet in diameter or square-end measure.

(d) Shall have one (1) commercial gear tag attached to opening ring or square.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008 at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman'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 March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

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 specifies the legal methods that may be used by commercial fishermen to harvest rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage the fish resources of Kentucky. This administrative regulation is also necessary to specify the legal methods that may be used to harvest rough fish species and help minimize potential impacts with sport fish species and conflicts with sport fish anglers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate, by administrative regulations, the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the size or type of devices and methods which shall be used by commercial fishermen to take wildlife, including rough fish species in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a maximum bar mesh size of 4.5 inches on gill and trammels nets used by commercial fishermen in the Ohio River from April 25 through October 31.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the maximum bar mesh size of 4.5 inches in the Ohio River from April 25 through October 31 during the closure of the paddlefish commercial fishing season. This will help prevent the capture of paddlefish outside of the legal commercial fishing season.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect only those commercial fishermen using gill or trammel nets on the Ohio River from April 25 through October 31. There were a total of 52 commercial fishermen using gill or trammel nets in the Ohio River during the 2006-2007 commercial fishing season.

(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: Commercial fishermen using gill or trammel nets on the Ohio River from April 25 through October 31 shall use nets with a bar mesh size no larger than 4.5 inches in order to comply with this administrative regulation amendment.

(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 incurred to commercial

fishermen using gill or trammel nets on the Ohio River from April 25 through October 31 in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, commercial anglers fishing the Ohio River from April 25 through October 31 will help reduce the amount of by-catch and subsequent mortality of paddlefish during the nonpaddlefish season.

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

(a) Initially: There will be no cost to the agency as result of this administrative amendment.

(b) On a continuing basis: There will be no cost 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 is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all commercial fishermen using gill or trammel nets on the Ohio River from April 25 through October 31 were 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 Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement 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 150.025 authorizes the department to regulate, by administrative regulations, the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken.

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 direct revenue will be generated by this administrative regulation. This administrative regulation establishes the size or type of devices and methods used to take wildlife, including rough fish.

(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 direct revenue will be generated by this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional (new) costs incurred for the first year as a result of this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? There will be no additional (new) costs incurred 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:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing the methods and devices used to take wildlife, as well as the buying and selling of wildlife. The function of this administrative regulation is to regulate the taking of fish for commercial use, to avoid conflicts with other interests, and to utilize and conserve these fish populations.

Section 1. Definitions. (1) "Bar mesh size" is defined in 301 KAR 1:140.

(2) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3)[~~(2)~~] "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(4) "Dealer permit" means a commercial roe dealer permit.

(5) "Harvester permit" means a commercial roe fish harvester permit.

(6)[~~(3)~~] "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(7) "Roe fish" means paddlefish, shovelnose sturgeon, and bowfin.

(8)[~~(4)~~] "Sport fish" means those species so designated by 301 KAR 1:060.

(9)[~~(5)~~] "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than one (1) unlicensed helper while actively fishing.

(2) An unlicensed helper shall be accompanied by a licensed commercial fisherman while using [~~not use~~] commercial fishing gear or selling fish [~~sell fish unless he is accompanied by a licensed commercial fisherman~~].

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear so that a conservation officer can find and read the commercial gear tag without undue difficulty.

(2) Not use commercial fishing gear:

(a) Within fifty (50) yards of the outlet or inlet of an overflow lake; or

(b) Within fifty (50) yards of the mouth of a stream except the mouth of the Ohio River.

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Harvester Permit Requirements. (1) A harvester permit shall be required for a licensed commercial fisherman to harvest roe fish or its roe. A harvester permit shall not be required for a special commercial fishing permittee to harvest paddlefish flesh or roe from Kentucky and Barkley lakes during the special commercial fishing season, as stipulated in 301 KAR 1:140.

(2) A licensed commercial fisherman, who meets the eligibility requirements in this section shall apply for a harvester permit by submitting a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022.

(3) The department shall issue a harvester permit only to a person who possesses a valid Kentucky commercial fishing license; and

(a) Reported paddlefish flesh or roe harvest in Kentucky from March 1, 2006 through September 7, 2007; or

(b) Possessed a shovelnose sturgeon permit from March 1, 2006 through September 7, 2007.

(4) For the harvester permit season, as stipulated in Section 6 of this administrative regulation, a commercial fisherman that is eligible to purchase a harvester permit shall purchase the harvester permit during the period from July 1, 2008 through September 30, 2008. The department shall use a lottery drawing to issue up to fifteen (15) additional harvester permits to new applicants who are currently not eligible to purchase a harvester permit, as stipulated in Section 4(3) of this administrative regulation.

(a) A person wishing to apply for a harvester permit in the lottery drawing shall submit a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022, during the period from July 1, 2008 through September 30, 2008.

(b) The lottery drawing for the fifteen (15) additional permits shall be made on October 15, 2008.

(c) No more than three (3) of the fifteen (15) additional harvester permits shall be issued to nonresidents.

(d) Permit fees shall be returned if a person does not get chosen in the lottery drawing.

(5) The number of harvester permits issued by the department shall be capped for future years at the total number of harvester permits issued in 2008 from the process described in subsections (3) and (4) of this section. New harvester permits shall not be issued until the total number of harvester permits falls below the cap established in 2008.

(a) A lottery drawing shall be used to select new harvester permittees once the number of harvester permits issued has dropped below the cap established in 2008.

(b) Resident commercial fishermen shall be given first priority in the lottery drawing process for a vacant resident or nonresident harvester permit.

(c) A person wishing to apply for a vacant harvester permit shall submit a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022, on or before October 15 to be included in the lottery drawing. A harvester permit application mailed to the department shall be postmarked on or before October 15.

(6) A harvester permittee shall purchase a harvester permit annually by October 15 to retain their roe fish harvesting privilege. A harvester permit application mailed to the department shall be postmarked on or before October 15.

(a) A harvester permittee shall be eligible to transfer their permit privileges to an immediate family member or a documented unlicensed helper of the harvester permittee.

(b) A harvester permit transfer shall occur prior to the October 15 harvester permit season.

(c) Transferability shall be voided if a commercial fishing license or harvester permit is revoked or pending revocation as specified in Section 10 of this administrative regulation.

(7) A harvester permittee shall:

(a) Have the harvester permit in possession while:

1. Fishing for roe fish or its roe;

2. Transporting roe fish or its roe; and

3. Selling roe fish species or its roe.

(b) Only sell, ship, barter, or provide harvested roe from roe fish to a Kentucky dealer permittee as stipulated in Section 5 of this administrative regulation;

(c) Have in possession a valid bill of lading when transporting processed roe prior to a transaction with a permitted dealer;

(d) Complete a Daily Commercial Roe Harvest Report for each transaction with a permitted dealer and submit to the department within thirty (30) days of the date of the transaction; and

(e) Submit a completed Monthly Report of Commercial Fish Harvest in Kentucky, as stipulated in Section 10 of this administrative regulation to the department.

Section 5. Dealer Permit Requirements. (1) A Kentucky dealer permit shall be required to buy, sell, barter, receive, or ship roe from roe fish harvested in Kentucky by a person who possesses a valid Kentucky harvester permit or a special commercial fishing permit.

(2) A person shall apply for a dealer permit by submitting a completed Application for a Commercial Roe Dealer Permit along with permit fees to the department, as stipulated in 301 KAR 3:022.

(3) A dealer permittee shall:

(a) Have in possession a valid dealer permit when purchasing, receiving, or transporting roe harvested from a permitted harvester;

(b) Maintain an accurate record of all roe purchased from roe fish harvested in Kentucky;

(c) Submit a completed Monthly Commercial Roe Dealer Report to the department by the tenth day of the following month;

(d) Sign the Daily Commercial Roe Harvest Report for each transaction with a harvester permittee prior to purchasing or receiving roe from the licensed harvester permittee;

(e) Retain a copy of the Daily Commercial Roe Harvest Report for each transaction with a harvester permittee for a period of three (3) years; and

(f) Allow a conservation officer to inspect his or her facilities for record keeping and other requirements stipulated in this administrative regulation.

Section 6. Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 except for:

(a) Kentucky and Barkley lakes as described in 301 KAR 1:140;

(b) The shovelnose sturgeon (Scaphirhynchus platorynchus) season, which shall extend from October 15 through May 15; and

(c) The paddlefish (Polyodon spathula) season, which shall extend from November 1 through April 24.

(2)[~~A commercial fisherman shall have in his or her possession a valid commercial fishing license and a commercial shovelnose sturgeon permit to possess shovelnose sturgeon and their eggs.~~

~~(3)~~] There shall be no size limits on any commercially-harvested rough fish except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of snout to the fork of the tail fin; and

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except for Kentucky and Barkley lakes as specified in 301 KAR 1:140.

(3) A harvester permittee or a special commercial fishing permittee shall not possess paddlefish or shovelnose sturgeon roe more than five (5) days after the closure of the paddlefish or shovelnose sturgeon commercial fishing season or the special commercial fishing season on Kentucky and Barkley lakes as specified in 301 KAR 1:140.

Section 7. [~~shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from tip of snout to the fork of the tail fin.~~

~~Section 5.~~] Fish Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not take:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon (Scaphirhynchus albus), a federally-endangered species; or

(c) Lake sturgeon (Acipenser fulvescens).

(2) If a commercial fisherman [~~mistakenly~~] catches a fish listed in subsection (1) of this section, the fish shall be immediately returned [~~he shall immediately return the fish~~], without undue injury, to the waters where it was taken.

(3) A licensed commercial fisherman shall not sell paddlefish or shovelnose sturgeon harvested by the following sport fishing methods:

(a) Hook and line in hand;

(b) Rod in hand;

(c) Jugging;

(d) Snagging; and

(e) Sport fishing trotlines.

Section 8.[~~Section 6.~~] Tending Gear and Removing Fish. A commercial fisherman shall:

(1) Tend and remove the fish from:

(a) Baited hoop nets or slat traps at least every seventy-two (72) hours; and

(b) Other commercial fishing gear at least every twenty-four (24) hours.

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank.

(3) Remove commercial fishing gear from the water when finished fishing.

Section 9. Roe Fish Species Egg Checking Methodology. A commercial fisherman shall be allowed to use a ten (10) gauge needle to examine roe fish for the presence of eggs as a legal egg checking methodology.

Section 10.[~~Section 7.~~] Reporting. [~~(1)~~] A commercial fisherman shall report his or her monthly catch for all months [~~that he or she was~~] licensed including those when the licensee did not fish to the department, by the tenth day of the following month, by completing a Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.

[~~(2) The department shall not renew the license of a commercial fisherman who does not submit a completed Monthly Report of Commercial Fish Harvest in Kentucky form for each month that he or she was licensed, including any months when the licensee did not fish.~~]

Section 11.[~~Section 8.~~] License and Permit Revocation and Nonrenewal. The department shall revoke or not renew the commercial fishing license, harvester permit, or dealer permit for a period of two (2) years of a person who fails to complete and submit to the department a Monthly Commercial Roe Dealer Report, a Monthly Report of Commercial Fish Harvest in Kentucky, or a Daily Commercial Roe Harvest Report for each transaction involving a commercial roe dealer permittee or who [~~that~~] has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(1) Use of illegal commercial gear;

(2) Placement of commercial fishing gear in a restricted area;

(3) Harvesting of prohibited species of fish;

(4) Commercially fishing in waters not open to commercial fishing; or

(5) Nonreporting or falsifying of commercial harvest data.

Section 12.[~~Section 9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a Commercial Roe Dealer Permit", 2008;

(b) "Application for a Commercial Rode Fish Harvester Permit", 2008;

(c) "Daily Commercial Roe Harvest Report", 2008;

(d) List of commercial fishermen who purchased a commercial fishing license and reported harvesting paddlefish flesh or roe in Kentucky from March 1, 2006 through September 7, 2007;

(e) List of commercial fishermen who purchased a shovelnose sturgeon permit from March 1, 2006 through September 7, 2007;

(f) "Monthly Commercial Roe Dealer Report", 2008; and

(g) "Monthly Report of Commercial Fish Harvest in Kentucky", 2007. [~~The Monthly Report of Commercial Fish Harvest in Kentucky, 2007, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman'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 March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

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 specifies legal commercial fishing and reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the requirements for commercial fishing in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes new requirements for commercial fishermen to obtain a commercial roe fish harvester permit and a commercial roe dealer permit. In addition, this amendment eliminates the shovelnose sturgeon permit. This amendment also establishes a paddlefish commercial fishing season from November 1 through April 24. The minimum size limit for paddlefish shall be 32 inches. This amendment also establishes the use of a 10 gauge needle to check for eggs in paddlefish as a legal egg checking methodology. Lastly, this amendment clarifies that commercial fisherman shall not sell paddlefish or shovelnose sturgeon harvested by sport fishing methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the department to effectively manage the paddlefish and shovelnose sturgeon fisheries in Kentucky. This amendment establishes a permit process for commercial fishermen and dealers of roe in Kentucky. This amendment also establishes a commercial fishing season for paddlefish. Lastly, this amendment clarifies that commercial fishermen shall not sell paddlefish or shovelnose sturgeon harvested by sport fishing methods.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all commercial fishermen who harvest roe fish. In 2008, there will be a maximum of 121 commercial fishermen eligible to purchase a commercial roe fish harvester permit. This amendment will also affect all individuals or businesses that purchase or receive roe. There is no current estimate on the number of individuals or businesses that purchase or receive roe in 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: All commercial fishermen who harvest roe fish shall be required to purchase a commercial roe fish harvester permit. In addition, all harvested roe in Kentucky shall be sold only to a licensed commercial roe dealer permittee. Commercial roe fish harvester permittees shall only harvest paddlefish from November 1 through April 24. Commercial fishermen shall not sell paddlefish harvested by sport fishing methods.

(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 resident and nonresident commercial fishermen $500 and $1,500, respectively, to purchase a commercial roe fish harvester permit. It will cost resident and nonresident roe buyers $500 and $1,000, respectively, to purchase a commercial roe dealer permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, the department will be better able to manage the commercial fisheries for roe fish. This will help maintain a sustainable commercial fishery for these species which will be a benefit to the commercial fishermen and the fishery resource.

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

(a) Initially: There will be no cost to the agency as result of this administrative amendment.

(b) On a continuing basis: There will be no cost 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 is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary to implement this administrative regulation. This amendment will establish two new permits and fees and will eliminate one existing permit and fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment establishes two new permits and fees; a commercial roe fish harvester permit available to either resident ($500) or nonresident ($1,500) commercial fishermen and a commercial roe dealer permit available to either residents ($500) or nonresidents ($1,000).

(9) TIERING: Is tiering applied? Yes, tiering was applied. Only licensed commercial fisherman who either (1) reported paddlefish flesh or roe harvest from March 1, 2006 through September 7, 2007 or (2) purchased a shovelnose sturgeon permit from March 1, 2007 through September 7, 2007 will remain eligible to purchase a commercial roe fish harvester permit. Licensed commercial fishermen who do not meet these eligibility requirements or who names are not chosen during the lottery drawing for vacant harvester permits will not be eligible to harvest roe fish flesh or roe during the 2008/2009 commercial roe fish harvester season.

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 Divisions of Fisheries and Law Enforcement 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 150.025 authorizes the Department to promulgate administrative regulations necessary to establish commercial fishing requirements that are necessary to protect fish from being over harvested.

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 potentially generate $500 for each resident commercial roe fish harvester permit and $1,500 for each nonresident commercial roe fish harvester permit sold. A maximum of 121 commercial roe fish harvester permits will be sold for the 2008/2009 commercial fishing season. If all 121 commercial roe fish harvester permits were purchased for the 2008/2009 commercial fishing season, this amendment will generate $88,500 in revenue from the sale of commercial roe fish harvester permits. Additionally, this amendment will generate $500 for each resident commercial roe dealer permit and $1,000 for each nonresident commercial roe dealer permit sold. There is no current estimate on the number of individuals or businesses that will purchase a commercial roe dealer permit.

(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 amount of revenue will be determined by the number of commercial fishermen who purchase a commercial roe fish harvester permit and by the number of individuals or businesses who purchase a commercial roe dealer permit. If all 121 commercial roe fish harvester permits are purchased in subsequent years, this administrative regulation will generate $88,500 in revenue from the sale of commercial roe fish harvester permits. There is no current estimate on the number of individuals or businesses that will purchase a commercial roe dealer permit in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015(1) requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause [~~substantial~~] harm to the wildlife population if left unregulated.

Section 1. Definitions. (1) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids pursuant to 301 KAR 2:083 and wildlife being rehabilitated or held in captivity pursuant to 301 KAR 2:075, 2:081, and 2:082.

(2) "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, thistle, wheat, or other grain, or any manufactured feed to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to

wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

Section 2. Recreational Feeding of Wildlife. (1) Wildlife may be fed year round in municipal areas, state and local parks not open to legal hunting or trapping, unless otherwise prohibited by an administrative regulation.

(2) Wildlife may be fed year round within the curtilage of the home.

(3) Wildlife shall not be fed from March 1 through May[~~July~~] 31 except as provided in subsections (1) and (2) of this section.

(4) The prohibition established in subsection (3) of this section shall not apply to the feeding of:

(a) Fish; or

(b) Wildlife in a zoo or other facility that keeps or exhibits wildlife for public viewing.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman'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 March 31, 2008. 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 Sportsman'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: Except for black bears as specified in 301 KAR 2:300, this regulation establishes dates and other restrictions for feeding of wildlife in Kentucky.

(b) The necessity of this administrative regulation: This regulation enables law enforcement officers to more effectively enforce 301 KAR 2:140 that prohibits the use of bait for hunting turkeys. This regulation also would significantly lessen risk of disease outbreaks among wildlife as transmission rates are elevated at communal feeding sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations reasonably necessary to manage game and fish. As such, the authorizing statute enables implementation of this regulation that will protect wildlife populations from illegal harvest and potential disease risk.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 150.025 authorizes the department to promulgate administrative regulations regarding seasons and methods of taking wildlife. This administrative regulation would prohibit feeding of wildlife, specifically throughout the spring turkey season when harvest over bait is prominent. This administrative regulation will allow law enforcement officers to cite all persons that hunt or harvest turkeys over bait.

(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 increase the time period when people can legally feed wildlife.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow additional opportunity for people to feed wildlife without negatively impacting wildlife populations.

(c) How the amendment conforms to the content of the authorizing statutes: See "1c" above.

(d) How the amendment will assist in the effective administration of the statutes: See "1d" above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any individuals that feed wildlife outside the curtilage of their home. Estimates of how many people that feed wildlife in Kentucky do not exist.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons that feed wildlife outside the curtilage of their home must remove all food items March 1 through May 31.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with the implementation of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow additional opportunity for people to legally feed wildlife without negatively impacting wildlife populations.

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

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

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

(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 State Game and Fish Fund.

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

(9) TIERING: Is tiering applied? Tiering was not used because all people shall comply with the same procedures, seasons and limits.

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 will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 grants the Kentucky Department of Fish and Wildlife authority to regulate and restrict when, where, and how wildlife are taken. This includes the authority to implement restrictions on practices that influence harvest rates, such as the

feeding of wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no 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 administrative regulation will generate no future revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this administrative regulation.

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

Revenues (+/-): See 4 (a) and (b) above.

Expenditures (+/-): See 4 (c) and (d) above.

Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:041. Shooting preserves and foxhound training enclosures.

RELATES TO: KRS 150.010, [~~150.170, 150.175,~~] 150.180, [~~150.240,~~] 150.280, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.175[~~(1)(q)~~], 150.240[~~(2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the commissioner, with the approval of the commission, to establish and regulate private or commercial hunting preserves.[~~(1)(q) establishes a special license for nonresidents to hunt on shooting preserves.~~] KRS 150.240[~~150.250(2)~~] authorizes the department to promulgate administrative regulations governing public or commercial shooting areas[~~preserves~~]. This administrative regulation establishes procedures to insure that detrimental exotic game species are not introduced, to insure uniformity of shooting preserve and dog training area operating procedures, and to protect native wildlife.

Section 1. Definitions. (1) "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite year round.

(2) "Hoofed animal" means ungulate wildlife except wild hog and javelina.

(3) "Shooting preserve" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Dog Training Area Season. (1) Captive-reared bobwhite: year round.

(2) Pheasant and chukar: year-round pursuant to 301 KAR 3:030.

Section 3. Shooting Preserve Hunting Seasons. (1) Bobwhite: August 15 through April 15.

(2) Mallard duck: year round.

(3) Hoofed animals: September 1 through May 15.

(4) Seasons for other species shall conform to those in effect where the preserve is located.

Section 4. Permits, Applications, and Transfers. (1) Without first obtaining a permit from the department, a person shall not operate:

(a) A shooting preserve for birds;

(b) A dog training area; or

(c) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.

(2) New permits shall not be issued for shooting preserves for any hoofed animals.

(3) Dog training area permits, shooting preserve permits for hoofed animals in existence prior to March 8, 2002, and shooting preserve permits for birds shall be valid from July 1 through June 30 and renewable annually.

(4) An application:

(a) Shall be made on a form supplied by the department; and

(b) For a foxhound training enclosure permit shall be signed by each person having a financial interest in the preserve.

(5) The applicant for a permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting preserve or dog training area.

(6) A shooting preserve permit may be transferable if an existing and currently permitted shooting preserve is sold to a person or entity who will maintain and operate the shooting preserve.

(a) The shooting preserve permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer, the facility shall be inspected for compliance with this administrative regulation by a conservation officer.

(c) Prior to authorizing the transfer of a shooting preserve permit, the purchaser of the shooting preserve shall apply on a KDFWR shooting preserve transfer form, complete the form in its entirety, and shall include a plat of the shooting preserve boundaries performed by a licensed surveyor.

(d) A transferred shooting preserve permit may be renewed each year by submitting a shooting preserve permit application on or before May 30.

(e) A transferred shooting preserve permit shall be given the same rights as the existing permitted facility at the time of transfer.

(f) A transferred shooting preserve permit shall only be valid for the land that was permitted prior to the time of the transfer and as described in the plat.

(7) An applicant for a foxhound enclosure permit shall provide evidence that he is the owner or operator of the enclosure.

(8) If the ownership or management of a foxhound training enclosure changes, the new owner or manager shall apply for a new permit.

(9) Prior to renewal of a permit, reporting requirements as established in Section 8 of this administrative regulation shall be met for the previous year.

Section 5. [~~Nonresident~~] Shooting Preserve Hunting Licenses. [~~A commercial shooting preserve operator wishing to sell nonresident shooting preserve licenses shall:~~]

(1) Persons hunting solely on a shooting preserve shall be eligible to purchase a shooting preserve hunting license from the department's Web site.

(2) The shooting preserve hunting license shall be valid only for the shooting preserve for which the license is purchased. [~~Furnish the department with a surety bond in the amount of $500.~~

~~(2) At the end of each month from September through May, send the department all money received from the sale of nonresident shooting preserve licenses.~~]

Section 6. Shooting Preserve and Dog Training Area Inspection. (1) Size requirements and posting.

(a) Shooting preserves.

1. The boundary of a shooting preserve shall be marked with signs:

a. At least eight (8) inches by twelve (12) inches;

b. Having a white background with contrasting letters at least one (1) inch high;

c. Stating "Shooting Preserve"; and

d. Placed not be more than 500 feet apart.

(b) Dog Training Areas.

1. Size requirement: minimum size shall be ten (10) acres and maximum size shall be seventy-five (75) acres.

2. Inspection.

a. A department biologist or conservation officer shall inspect the area prior to application approval.

b. The area shall consist of mowed or cut grass with no more than ten (10) percent grain or food plots.

3. The boundary of a dog training area shall be marked with signs:

a. At least 8 in. x 12 in.;

b. Have a white background with contrasting letters at least one (1) inch high;

c. State "Dog Training Area"; and

d. Placed not more than 150 feet apart.

Section 7. Operating Requirements for Shooting Preserves and Dog Training Areas. (1) A person shall not hunt or carry a gun on a shooting preserve before checking in at a designated check station or with the operator.

(2) A person shall not hunt or carry a gun on a shooting preserve or dog training area without a current Kentucky hunting license or shoot-to-retrieve field trial permit.

(3) A person observing but not participating in a field trial shall not be required to possess a hunting license.

(4) A field trial may be held throughout the year on a permitted shooting preserve or dog training area.

Section 8. Record Keeping and Reporting Requirements. (1) Shooting preserves.

(a) The permit holder shall maintain a daily record of hunting activities on the preserve showing the name, address and hunting license number of each person using the preserve.

(b) A shooting preserve operator shall obtain a receipt showing the number of game bird eggs or game birds purchased by species.

(c) A shooting preserve permit holder shall retain records and receipts for at least one (1) year.

(d) A person hunting on a shooting preserve or the shooting preserve operator shall have in his possession:

1. A bill of sale for birds released for hunting; or

2. A copy of the shooting preserve's commercial captive wildlife permit.

(2) Dog Training Areas.

(a) The permit holder shall maintain a daily record of training or field trial activities on the area showing the name, address and hunting license number of each person using the area.

(b) A dog training area permit holder shall retain records and receipts for at least one (1) year.

(c) A person training dogs on a dog training area shall have in his possession;

1. A bill of sale for bobwhite released for training; or

2. A copy of their captive wildlife permit.

Section 9. Hoofed Animals. (1) A shooting preserve permit holder shall not import into or release a hoofed animal.

(2) The permit holder shall:

(a) Keep a record of:

1. The number of each hoofed species taken; and

2. The name, address, hunting license number and game killed by species by each hunter.

(b) At the end of each month from September through May, submit these records to the department.

(3) A permit holder shall not import, release or hunt wild hogs, javelinas, or any member of the family Suidae.

Section 10. Foxhound Training Enclosure Requirements. (1) To qualify for a permit, a foxhound training enclosure shall be:

(a) At least 200 acres;

(b) Fenced to enclose foxes; and

(c) Not divided by an interior fence that restrict the range of foxes to less than 200 acres.

(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:

(a) Each is at least 200 acres; and

(b) The enclosures share a common fence.

(3) The operator shall provide:

(a) Proper food, water, and shelter from inclement weather for foxes within the enclosure.

(b) At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the foxes within the enclosure, preventing their capture by hounds.

(c) If a fox is held for release into an enclosure, a cage:

1. Eight (8) feet long, four (4) feet wide and six (6) feet high;

2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and

3. Containing an enclosed den box capable of housing a pair of foxes.

(4) A person shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.

Section 11. Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in the enclosure.

(2) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.

(3) A person shall not take wildlife within an enclosure except under applicable administrative regulations and license requirements.

(4) An operator shall:

(a) Allow the department to inspect his facilities; and

(b) Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.

Section 12. Revocation of Permits. (1) Revocation. A person convicted of a fish and wildlife violation including KRS Chapter 150, KAR Title 301, and federal wildlife laws shall have his permit revoked for a period of three (3) years.

(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Shooting Preserve Permit Application", 2006;

(b) "Application for Commercial Foxhound Training Enclosure Permit," 1998;

(c) "Dog Training Area Permit Application", 2004; and

(d) "Shooting Preserve Permit Transfer Form", 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman'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 March 31, 2008. 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 Sportsman'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 establishes a shooting preserve hunting license for persons solely hunting on licensed shooting preserves and deletes the requirement of a surety bond for shooting preserves selling licenses at their location.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage hunting opportunities in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.250(2) authorizes the department to promulgate administrative regulations governing shooting preserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.250(2) by defining a license to hunt solely on a licensed shooting preserve.

(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 deletes the requirement of a surety bond to sell shooting preserve hunting licenses and moves the sale of these licenses to the internet. It allows shooting preserve hunters the ability to purchase a shooting preserve hunting license which can be used year round on a specific shooting preserve.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow the Department of Fish and Wildlife Resources to control and manage the sale of hunting licenses for shooting preserves.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 66 shooting preserve permits were issued in 2007 and 893 hunters purchased a special shooting preserve permit in 2006.

(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: Shooting preserve permit holders will no longer be required to sell licenses for people wishing to hunt on their preserve. Shooting preserve permit holders will not have to post a surety bond for these licenses. Persons hunting on shooting preserves will have to obtain a shooting preserve hunting license via the internet before hunting. This could still be done at the preserve location if internet access is provided, or the hunter could purchase at their home residence or another location with internet access.

(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 each person affected by this administrative regulation $5.00 for a shooting preserve hunting license valid for the license year on a specific shooting preserve.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Shooting preserve hunters will benefit because they only have to obtain one license for $5.00 to hunt as many days as they desire on a specific shooting preserve, as opposed to spending $20 for an annual hunting license.

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

(a) Initially: There will be only a minimal set-up cost to the administrative body to implement this administrative regulation using existing staff and resources.

(b) On a continuing basis: There will be no cost 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 is the Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in 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: No. The fees for the shooting preserve hunting license are established in 301 KAR 3:022.

(9) TIERING: Is tiering applied? No. All persons purchasing shooting preserve hunting licenses 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 will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 grants the Kentucky Department of Fish and Wildlife authority to regulate and restrict when, where, and how wildlife are taken.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue will be determined by the number of hunters purchasing licenses to hunt solely on a specific shooting preserve. Based on 2006, this would equal 893 hunters at $5.00 each, totaling $4,465.00. This may be a reduction in revenue from the current one-day hunting license ($7.00 for residents and $10.00 for non-residents) and the previous $20.00 license for shooting preserves. However, there is no way to determine how many will purchase the new license versus the aforementioned alternatives.

(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 amount of revenue will be determined by the number of hunters purchasing licenses to hunt solely on a specific shooting preserve

(c) How much will it cost to administer this program for the first year? There will be only a minimal set-up cost to the administrative body to implement this administration regulation using existing staff and resources.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs incurred 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 (+/-): See 4 (a) and (b) above.

Expenditures (+/-): See 4 (c) and (d) above.

Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225,

150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.175 establishes the kinds of licenses and tags. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. Licenses, tags, and permits listed in this section[~~subsection~~] shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $150; and

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: $100.

(4) [~~Commercial shovelnose sturgeon permit for resident and nonresident: $500.~~

~~(5)~~] Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): $130;

(c) Statewide junior hunting license (resident or nonresident): five (5) dollars;

(d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;

(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and

(f)[~~(e)~~] Migratory game bird permit (resident or nonresident): ten (10) dollars.

(5)[~~(6)~~] Combination hunting and fishing license (resident): thirty (30) dollars.

(6)[~~(7)~~] Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7)[~~(8)~~] Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner/tenant): ten (10) dollars;

(c) Trapping license (nonresident): $130; and

(d) Junior trapping license (resident): five (5) dollars.

(8)[~~(9)~~] Game permits:

(a) Resident quota elk hunt permit: thirty (30) dollars;

(b) Nonresident quota elk hunt permit: $365;

(c) Resident out-of-zone elk hunt permit: thirty (30) dollars;

(d) Nonresident out-of-zone elk hunt permit: $365;

(e) Game permit, resident deer: thirty (30) dollars;

(f) Game permit, nonresident deer: sixty (60) dollars;

(g) Junior game permit, deer (resident or nonresident): ten (10) dollars;

(h) Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

(i) Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

(j) Game permit, resident spring turkey: thirty (30) dollars;

(k) Game permit, nonresident spring turkey: sixty (60) dollars;

(l) Game permit, resident fall turkey: thirty (30) dollars;

(m) Game permit, nonresident fall turkey: sixty (60) dollars; and

(n) Junior game permit, turkey (resident or nonresident): ten (10) dollars.

(9)[~~(10)~~] Peabody individual permit: fifteen (15) dollars.

(10)[~~(11)~~] Commercial mussel licenses:

(a) Mussel[illegible]g license (resident): $400;

(b) Mussel[illegible]g license (nonresident): $1,600;

(c) Mussel buyer's license (resident): $600; and

(d) Mussel buyer's license (nonresident): $1,600.

(11)[~~(12)~~] Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

(12)[~~(13)~~] Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

(13)[~~(14)~~] Land Between the Lakes hunting permit: twenty (20) dollars.

(14)[~~(15)~~] Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section[~~subsection~~] shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): $150.

(2) Commercial taxidermist license: $150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): $150; and

(b) Commercial guide license (nonresident): $400.

(4) Shooting preserve permit: $150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: $250.

(7) Nuisance wildlife control operators (NWCO) permit: $100;

(8) Pay lake license:

(a) First two (2) acres or less: $150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: $150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: $250; and

(13) Peabody Wildlife Management Area annual event permit: $250.

Section 3. Licenses, tags and permits listed in this section[~~subsection~~] shall be valid for three (3) years from the date of issue.

(1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section[~~subsection~~] shall be valid for the date or dates specified on each.

(1) Short-term licenses:

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: ten (10) dollars;

(c) Seven (7) day nonresident fishing license: thirty (30) dollars;

(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.

(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.

(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

(g) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;

(h) Three (3) day fur bearer's license: fifty (50) dollars; and

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special resident commercial fishing permit: $600.

(4) Special non-resident commercial fishing permit: $900.

(5) Commercial waterfowl shooting area permit: $150.

(6) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permits (per year):

(a) Five (5) dollars through December 31, 2007; or

(b) $100 per ten (10) year permit cycle beginning January 1, 2008.

(8) Peabody individual event permit: twenty-five (25) dollars.

(9) Commercial roe dealer permit:

(a) Commercial roe dealer permit (resident): $500; and

(b) Commercial roe dealer permit (nonresident): $1,000.

(10) Commercial roe fish harvester permit:

(a) Commercial roe fish harvester permit (resident): $500; and

(b) Commercial roe fish harvester permit (nonresident): $1,500.

Section 5. Licenses, tags, and permits listed in this section[~~subsection~~] shall be valid on a per unit basis as specified.

(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking):

(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;

(b) Ponds from 1.5 to 2.9 surface acres: $200; and

(c) Ponds equal to or greater than 3.0 surface acres: $200 plus $150 for each additional surface acre of water over 3.0 acres prorated on a 0.25 acre basis.

(6) Commercial captive cervid permit (per facility, per year): $150.

(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section[~~subsection~~] shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): $150.

(2) Fur buyer's license (resident): fifty (50) dollars.

(3) Fur buyer's license (nonresident): $300.

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008 at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman'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 March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-0506.

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 establishes the fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to authorize the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing reasonable license fees and permit terms and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.175 establishes the kinds of licenses and tags.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purpose of KRS 150.175 and 150.225 by establishing the types of licenses necessary to hunt, fish, and trap in Kentucky. This administrative regulation will also carry out the purpose of KRS 150.195(4)(f) by establishing the terms and expiration dates of licenses and permits.

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

(a) How the amendment will change this existing administrative regulation: This amendment will eliminate the commercial shovelnose sturgeon permit and create a new commercial roe fish harvester permit and a commercial roe dealer permit. This amendment will also add the shooting preserve hunting license for residents and nonresidents.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectively manage the paddlefish and shovelnose sturgeon commercial fisheries that exist for roe (caviar). All commercial fishermen who wish to harvest roe fish shall be required to purchase a commercial roe fish harvester permit. A person who desires to purchase roe from commercial fishermen, shall possess a commercial roe dealer permit. This amendment also adds the shooting preserve hunting license pursuant to 301 KAR 2:041, which will allow residents and nonresidents to purchase one license for unlimited hunting on one shooting preserve for the license year.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all commercial fishermen who harvest paddlefish, shovelnose sturgeon, and bowfin for flesh or roe. In 2008, there will be 106 commercial fishermen, plus an additional 15 lottery permits, eligible to purchase a commercial roe fish harvester permit. This amendment will also affect all individuals or businesses that purchase or receive roe. They will be required to purchase a commercial roe dealer permit. Additionally, 893 persons purchased a special shooting preserve permit in 2006 will be affected if they purchase the new shooting preserve hunting license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All commercial fishermen who harvest paddlefish, shovelnose sturgeon, and bowfin shall be required to purchase a commercial roe fish harvester permit. In addition, all harvested roe in Kentucky must be sold only to a licensed commercial roe dealer permittee. In addition, persons hunting on a licensed shooting preserve may purchase a shooting preserve hunting license instead of an annual hunting license.

(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 resident and nonresident commercial fishermen

$500 and $1,500, respectively, to purchase a commercial roe fish harvester permit. It will cost resident and nonresident roe buyers $500 and $1,000, respectively, to purchase a commercial roe dealer permit. In addition, there will be a cost of $5 for a shooting preserve hunting license valid for the license year on that specific shooting preserve.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will help maintain a sustainable commercial fishery for these species which will be a benefit to the commercial fishermen and the fishery resource. Also, hunters will only have to purchase a $5 license per year if hunting on a specific shooting preserve and the license may be purchased at any location with internet access.

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

(a) Initially: There will only be a minimal set-up cost for the administrative body to implement this regulation using existing staff and resources.

(b) On a continuing basis: There will be no cost 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 is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary to implement this administrative regulation. This amendment will establish two new permits and fees and will eliminate one existing permit and fee and will establish a new license with no increase in fees of funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment established two new permits and fees; a commercial roe fish harvester permit available to either resident ($500) or nonresident ($1,500) commercial fishermen and a commercial roe dealer permit available to either residents ($500) or nonresidents ($1,000). The amendment also establishes a new $5 shooting preserve license. However, the amendment reduces the cost of the former license from $20 to $5 and provides a separate price reduction from the current one-day hunting license ($7 for residents and $10 for nonresidents) for hunters who chose to hunt on a licensed shooting preserve.

(9) TIERING: Is tiering applied? Tiering was not applied because all commercial fishermen who harvest paddlefish, shovelnose sturgeon, and bowfin were treated equally. Similarly, all individuals or businesses that purchase or receive roe from paddlefish, shovelnose sturgeon, and bowfin, harvested in Kentucky, were treated equally. Additionally, all individuals wishing to purchase a shooting preserve hunting license are treated the same whether resident or nonresident.

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 Divisions of Wildlife, Fisheries, and Law Enforcement 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 150.025 grants the Kentucky Department of Fish and Wildlife Resources authority to regulate and restrict when, where, and how wildlife are taken. KRS 150.175 establishes the kinds of licenses and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping.

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 potentially generate $500 for each resident commercial roe fish harvester permit and $1,500 for each nonresident commercial roe fish harvester permit sold. A maximum of 121 commercial roe fish harvester permits will be sold for the 2008/2009 commercial fishing season. If all 121 commercial roe fish harvester permits were purchased for the 2008/2009 commercial fishing season, this amendment will generate $88,500 in revenue from the sale of commercial roe fish harvester permits. Additionally, this amendment will generate $500 for each resident commercial roe dealer permit and $1,000 for each nonresident commercial roe dealer permit sold. There is no current estimate on the number of individuals or businesses that will purchase a commercial roe dealer permit. The amount of revenue generated by the new shooting preserve hunting license will be determined by the number of hunters purchasing licenses to hunt solely on a specific shooting preserve. Based on 2006, this would equal 893 hunters at $5 each, totaling $4,465. This may be a reduction in revenue from the current one-day hunting license ($7 for residents and $10 for nonresidents) and the previous $20 license for shooting preserves. However, there is no way to determine how many people will purchase the new license versus the aforementioned alternatives.

(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 amount of revenue will be determined by the number of commercial fishermen who purchase a commercial roe fish harvester permit and by the number of individuals or businesses who purchase a commercial roe dealer permit. If all 121 commercial roe fish harvester permits are purchased in subsequent years, this administrative regulation will generate $88,500 in revenue from the sale of commercial roe fish harvester permits. There is no current estimate on the number of individuals or businesses that will purchase a commercial roe dealer permit in subsequent years. The amount of revenue for subsequent years from the shooting preserve hunting license will be determined by the number of hunters purchasing licenses to hunt solely on a specific shooting preserve. It is unknown what this will generate in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be a minimal set-up cost for the new shooting preserve license to the administrative body to implement this administrative regulation using existing staff and resources.

(d) How much will it cost to administer this program for subsequent years? There will be no additional (new) costs incurred 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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in

order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) "Kentucky Correctional Institution for Women Policies and Procedures," February 15, 2008, [~~July 9, 2007~~] are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-03-01 Communications Between Staff and Inmates (Amended 2/15/08[~~6/10/03~~])
[~~KCIW 01-04-02 Annual Report (Added 3/13/03)~~
~~KCIW 01-05-01 Staff Meeting and Reporting Schedules (Added 3/13/03)~~]
KCIW 01-08-01 News Media Access (Amended 2/15/08)[~~(Totally Revised 3/13/03)~~
~~KCIW 01-08-02 Institutional Tours (Amended 6/10/03)~~
~~KCIW 01-09-01 Cooperation with Outside Agencies (Added 3/13/03)~~
~~KCIW 01-10-01 Services From Outside Agencies (Added 3/13/03)~~
~~KCIW 01-11-01 Annual Planning Document (Amended 6/10/03)~~
~~KCIW 02-01-01 Comprehensive Insurance Coverage (Amended 6/10/03)~~
~~KCIW 02-02-01 Fiscal Management: Audits (Totally Revised 3/13/03)~~
~~KCIW 02-02-02 Fiscal Management: Budgets (Added 3/13/03)~~
~~KCIW 02-02-04 Institution Purchasing Procedures (Totally Revised 3/13/03)~~
~~KCIW 02-03-01 Nonexpendable Personal Property (Amended 6/10/03)~~
~~KCIW 02-03-02 Inventory and Control of Stores (Totally Revised 3/13/03)~~]
KCIW 02-04-01 Accounting Procedures (Amended 2/15/08)[~~(Totally Revised 3/13/03)~~]
KCIW 02-05-01 Inmate Canteen and Staff Canteen (Amended 2/15/08)[~~(Totally Revised 3/13/03)~~]
KCIW 02-06-01 Interest Bearing Account (Amended 2/15/08[~~6/10/03~~])
[~~KCIW 03-01-01 Expense reimbursement (Amended 6/10/03)~~
~~KCIW 03-02-01 General Guidelines for Staff (Amended 6/10/03)~~
~~KCIW 03-02-02 Inclement Weather and Emergency Conditions (Amended 6/10/03)~~
~~KCIW 03-03-01 Employee Grievance Procedure (Amended 3/13/03)~~
~~KCIW 03-05-01 Employee Personnel File (Amended 3/13/03)~~
~~KCIW 03-09-01 Payroll Personnel Manning (Amended 3/13/03)~~
~~KCIW 03-10-01 Selection, Promotion and Lateral Entries (Amended 6/10/03)~~
~~KCIW 03-11-01 Merit Registers (Amended 3/13/03)~~
~~KCIW 03-13-01 Kentucky Employee Assistance Program (KEAP) (Amended 3/13/03)~~
~~KCIW 04-01-01 Advisory Training Committee (Added 3/13/03)~~
~~KCIW 04-02-01 Employee Training Requirements (Amended 6/10/03)~~]
KCIW 05-01-01 Research and Evaluation (Amended 6/10/03)
KCIW 05-02-01 Management Information System (Amended 6/10/03)
KCIW 05-03-01 Outside Consultation, Research, and Student Interns (Amended 6/10/03)
KCIW 06-01-01 Inmate Records (Totally Revised 3/13/03)
[~~KCIW 06-01-02 Transfers (Amended 6/10/03)~~]
KCIW 06-01-03 Storage of Expunged Records (Totally Revised 3/13/03)
[~~KCIW 07-01-01 Preventive Maintenance Plan (Added 3/13/03)~~
~~KCIW 07-03-01 Wastewater Treatment Plant: Operations (Added 3/13/03)~~]
KCIW 08-02-01 Fire Safety Practices (Amended 2/15/08)[~~(Added 3/13/03)~~]
KCIW 08-02-02 Fire Evacuation Routes (Amended 2/15/08)[~~(Added 3/13/03)~~]
[~~KCIW 08-03-01 Hazardous Communication Program (Added 3/13/03)~~]
KCIW 09-01-02 Inmate Move Sheet (Added 3/13/03)
KCIW 09-06-04 Regulation of Inmate Movement (Added 3/13/03)
[~~KCIW 09-07-02 Supervisory Staff Daily Inspections and Logs (Added 3/13/03)~~
~~KCIW 09-08-01 Tours of Living and Activity Areas (Added 3/13/03)~~]
KCIW 09-10-02 Inmate Entry and Exit Procedure (Added 3/13/03)
KCIW 09-11-01 Prohibiting Inmate Authority Over Other Inmates (Added 3/13/03)
KCIW 09-12-01 Search Plan (Added 3/13/03)
KCIW 09-13-01 Tobacco Free Environment (Amended 7/9/07)
KCIW 09-13-02 Alcohol Detection (Added 3/13/03)
KCIW 10-01-01 Special Management Unit General Operations and Regulations (Amended 6/10/03)
KCIW 10-01-02 Special Management Unit Programs, Placement and Review (Amended 6/10/03)
KCIW 10-01-04 Special Security (Totally Revised 3/13/03)
KCIW 11-01-01 Food Service Operation Inspections (Totally Revised 3/13/03)
KCIW 11-01-02 Budgeting, Accounting, and Purchasing for Food Service (Totally Revised 3/13/03)
KCIW 11-02-01 Menu Preparation and Special Diets (Totally Revised 3/13/03)
KCIW 11-03-01 General Guidelines for Food Service Operations (Amended 6/10/03)
KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area (Totally Revised 3/13/03)
[~~KCIW 11-05-01 Knife Control and Daily Inventory (Added 3/13/03)~~]
KCIW 11-07-01 Special Religious Diets (Totally Revised 3/13/03)
KCIW 12-01-01 Laundry, Clothing, and Personal Hygiene (Added 3/13/03)
KCIW 12-02-01 Pest Control (Added 3/13/03)
KCIW 12-03-01 Water Supply and Waste Disposal (Added 3/13/03)
KCIW 12-04-04 Sanitation Plan (Added 3/13/03)
KCIW 13-01-01 Provision of Medical and Dental Care (Amended 10/11/05)
KCIW 13-01-02 Health Appraisal and Periodic Exams (Amended 10/11/05)
KCIW 13-01-03 Pharmaceutical Services (Amended 10/11/05)
KCIW 13-02-01 Family Notification (Amended 10/11/05)
KCIW 13-03-01 Emergency Care (Amended 10/11/05)
KCIW 13-03-02 Convalescent and Chronic Care (Amended 10/11/05
KCIW 13-04-02 Psychiatric and Psychological Services (Amended 10/11/05)
KCIW 13-07-01 Detoxification and Alcohol or Chemical Dependency (Amended 10/11/05)
KCIW 13-09-01 Suicide Prevention and Intervention Program (Amended 10/11/05)
KCIW 13-09-02 Inmate Observer Program (Added 2/15/08)
KCIW 13-13-01 Healthcare Records (Amended 10/11/05)
KCIW 13-14-01 Health Services (Amended 10/11/05)
KCIW 14-01-02 Inmate Rights (Totally Revised 3/13/03)
KCIW 14-02-01 Access to Legal Resources and Services (Totally Revised 3/13/03)
KCIW 14-04-01 Inmate Grievance Procedure (Totally Revised 3/13/03)
KCIW 15-06-01 Restriction Guidelines (Amended 2/15/08[~~(Totally Revised 3/13/03)~~]
KCIW 16-01-01 Inmate Correspondence (Amended 6/10/03)
KCIW 16-02-01 Inmate Access to Telephones (Totally Revised 3/13/03)
KCIW 16-03-01 Inmate Visiting Regulations (Totally Revised 3/13/03)
[~~KCIW 16-03-02 Unauthorized Items (Totally Revised 3/13/03)~~
~~KCIW 16-04-01 Inmate Indigent and Low Income Fund (Totally Revised 3/13/03)~~]
KCIW 16-05-01 Inmate Packages (Totally Revised 3/13/03)
KCIW 17-01-01 Assessment and Classification Center Programs (Totally Revised 3/13/03)
KCIW 17-02-01 Admission Procedure (Amended 6/10/03)

KCIW 17-05-01 Inmate Personal Property (Totally Revised 3/13/03)
KCIW 18-01-01 Inmate Classification (Added 3/13/03)
KCIW 18-01-03 Honor Program (Amended 2/15/08)[~~Totally Revised 3/13/03~~)]
KCIW 18-05-01 Special Needs Inmates (Totally Revised 3/13/03)
KCIW 19-01-01 Inmate Work and Program Assignments (Amended 6/10/03)
KCIW 19-02-01 Governmental Services (Added 3/13/03)
KCIW 19-03-01 Landscape and Maintenance Work Details (Totally Revised 3/13/03)
KCIW 19-04-01 Correctional Industries (Added 3/13/03)
KCIW 20-01-01 Education Programs (Totally Revised 3/13/03)
KCIW 21-01-01 Library Services (Added 3/13/03)
[~~KCIW 21-02-01 Staff Library (Added 3/13/03)~~]
KCIW 22-01-01 Recreation and Inmate Activity (Added 3/13/03)
KCIW 22-01-02 Arts and Crafts Program (Added 3/13/03)
KCIW 22-01-04 Inmate Club Activities (Totally Revised 3/13/03)
KCIW 23-01-01 Religious Services (Totally Revised 3/13/03)
KCIW 23-01-02 Institutional Prayer (Added 3/13/03)
KCIW 24-01-01 Social Services Program (Added 3/13/03)
KCIW 24-02-01 Substance Abuse Program (Added 3/13/03)
KCIW 25-02-01 Temporary Release and Community Release (Amended 6/10/03)
[~~KCIW 25-02-02 Furloughs (Totally Revised 3/13/03)~~]
KCIW 25-03-01 Funeral Home Visit or Bedside Visit (Amended 6/10/03)
KCIW 26-01-01 Volunteer Service Program (Amended 6/10/03)

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LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 11, 2008

FILED WITH LRC: February 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. 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 cancelled. 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business March 31, 2008 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Correctional Institution for Women including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6), and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Kentucky Correctional Institution for Women.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates and visitors concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Correctional Institution for Women into compliance with ACA Standards and updates current practices for the facility.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Correctional Institution for Women.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Correctional Institution for Women 220 employees and 738 inmates, and all visitors to KCIW.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates and visitors will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Kentucky Correctional Institution for Women will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Correctional Institution for Women budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Correctional Institution for Women.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Kentucky Correctional Institution for Women, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the Kentucky Correctional Institution for Women or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Correctional Institution for Women operates, but do not increase costs from what was previously budgeted to the Kentucky Correctional Institution for Women.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Correctional Institution for Women operates, but are not expected to increase costs from what will be budgeted to the Kentucky Correctional Institution for Women.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Western Kentucky Correctional Complex Policies and Procedures," February 15, 2008, [~~policies and procedures, November 14, 2006,~~] are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01	Public Information and Media Communication (Amended 11/14/06)
WKCC 01-08-01	No Smoking: WKCC Facility [~~Smoking Policy~~] (Amended 2/15/08[~~10/14/05~~])
WKCC 02-01-01	Inmate Funds (Amended 10/14/05)
WKCC 02-01-02	Inmate Canteen (Amended 11/14/06)
WKCC 03-00-06	Confidentiality of Information by Consultants, Contract Personnel, and Volunteers (Amended 11/14/06)
WKCC 06-00-01	Offender Records and Information Access (Amended 11/14/06)
WKCC 08-02-01	Fire Safety Plan (Amended 10/14/05)
WKCC 09-11-01	Tool Control (Amended 10/14/05)
WKCC 10-02-02	Special Management Unit (SMU) Operating Procedures, Living Conditions and Classification (Added 11/14/06)
WKCC 11-00-01	Food Service General Guidelines (Amended 2/15/08)[~~11/14/06~~]
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets (Amended 2/15/08[~~9/14/06~~])
WKCC 12-00-02	Housekeeping, Sanitation and Waste Removal (Amended 11/14/06)
WKCC 13-01-01	Use of Pharmaceutical Products (Amended 2/15/08[~~10/13/05~~])
WKCC 13-02-01	Health Care Services (Amended 10/14/05)
WKCC 14-02-01	Inmate Clothing and Personal Hygiene Provisions (Amended 11/14/06)
WKCC 14-04-01	Legal Services Program (Amended 2/15/08[~~10/14/05~~])
WKCC 15-01-01	Hair and Grooming Standards (Amended 10/14/05)
WKCC 16-01-01	Visiting Policy and Procedures (Amended 2/15/08[~~11/14/06~~])
WKCC 16-02-01	Inmate Correspondence (Amended 2/15/08[~~11/14/06~~])
WKCC 16-03-01	Inmate Access to Telephones (Amended 10/14/05)
WKCC 16-04-01	Inmate Packages (Amended 2/15/08[~~10/14/05~~])
WKCC 17-01-01	Inmate Personal Property (Amended 10/14/05)
WKCC 17-02-01	Inmate Reception and Orientation (Amended 2/15/08[~~10/14/05~~])
WKCC 19-04-01	Assignment to and Safety Inspection of Inmate Work Program Areas (Amended 11/14/06)
[~~WKCC 19-04-02~~	~~Correctional Industries (Amended 9/14/06)~~]
WKCC 20-01-01	Education Program (Amended 9/14/06)
WKCC 21-00-01	Library Services (Amended 11/14/06)
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities (Amended 10/13/05)
WKCC 22-00-02	Inmate Organizations (Amended 11/14/06)
WKCC 23-00-01	Religious Services (Amended 2/15/08[~~10/14/05~~])
WKCC 24-00-01	Social Services (Amended 11/14/06)
WKCC 25-02-01	Inmate Release Process (Amended 2/15/08[~~10/14/05~~])
WKCC 25-03-01	Prerelease Programs (Amended 11/14/06)
WKCC 26-01-01	Volunteer Services Program (Amended 9/14/06)

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LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 11, 2008

FILED WITH LRC: February 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 11 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. 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 cancelled. 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business March 31, 2008 to:

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Western Kentucky Correctional Complex including the rights and responsibilities of Western Kentucky Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs every aspect of the operations of the Western Kentucky Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Western Kentucky Correctional Complex employees and the inmate population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments will bring Western Kentucky Correctional Complex in compliance with ACA Standards, show compliance with departmental policies and procedures, and show actual practice of the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Western Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: This will help Western Kentucky Correctional Complex to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 203 employees of the correctional institution, 672 inmates, and all visitors to the Western Kentucky Correctional Complex.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: 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: Funds budgeted for this 2006 – 2007 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: NONE

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation may impact Western Kentucky Correctional Complex's operational procedure.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Western Kentucky Correctional Complex.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Western Kentucky Correctional Complex operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Western Kentucky Correctional Complex operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 3:270. SEEK funding formula.

RELATES TO: KRS 156.035, 156.070, 157.320[~~(9)~~], 157.360, 157.370, 157.390, 157.410, 157.430, 157.440, 157.615, [~~157.620,~~] 158.135, 160.470, 160.476

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.035 and 156.070 set forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations for the preparation of budgets and salary schedules for the school districts under its management and control. KRS 157.320 defines average daily attendance. KRS 157.360 and 157.370 describe the Support Education Excellent in Kentucky (SEEK) base funding formula. KRS 157.410 sets forth the schedule of payments of SEEK funds to school districts. KRS 157.430 authorizes percentage reductions in SEEK allotments if insufficient funds are appropriated by the General Assembly. KRS 157.440 sets forth the requirements for state equalization for Tier I and the Facilities Support Program of Kentucky, exempts tax levies made for these programs from the hearing and recall provisions of KRS 160.470, authorizes districts to maintain the level of tax effort made in 1989-90. KRS 157.620 sets forth the requirements for school district participation in the School Facilities Construction Commission funding program. KRS 158.135 defines State Agency children. KRS 160.470 sets forth the required minimum local tax effort and defines equivalent tax rate. KRS 160.476 permits school districts to restrict funds for building purposes. This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk student amount" means fifteen (15) percent of the per pupil guaranteed base funding amount calculated pursuant to KRS 157.360[~~(1)~~] times the average daily membership of students approved [~~of the highest number of approved applications~~] for free meals [~~in each of the eight (8) months (September through May excluding December) of~~] the prior fiscal year and times the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, exceptional children and transportation per KRS 157.360(2) and the add-on calculation for students with Limited English Proficiency.

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per $100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.

(4) [~~"Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5) cent equivalent tax levy required to participate in the Facility Support Program of Kentucky under KRS 157.620(1)(a).~~

~~(5)~~] "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with communications disabilities.

(5)[~~(6)~~] "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance pursuant to KRS 157.360(8).

(6) "LEP" means Limited English Proficiency.

(7) "Home and hospital instruction amount" means the total of the prior year's home and hospital average daily attendance times the per pupil base funding amount calculated pursuant to KRS 157.360(1), less the allotment for capital outlay as set forth in the Biennial Budget.

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per $100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) "Net General Fund SEEK" means Total State SEEK minus any allocation for Capital Outlay.

(10) "Partial Day" means a day containing less time than a regular school day which a student attends on a regular basis as approved by the local board of education.[~~(9) "Release time" means regularly scheduled time missed by students with school district approval.~~

~~(10) "Shared time average daily attendance" means the average daily attendance for nonresident students who attend the district's schools on a part-time basis while enrolled in another district or nonpublic school.~~]

(11) "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(12) "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount established by KRS 157.440(1)(a), generates up to the maximum revenue allowable under KRS 157.440(1)(a).

(13)[~~"Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable under KRS 157.440(2).~~

~~(14)~~] "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated [~~by the Division of Pupil Transportation, Department of Education,~~] pursuant to KRS 157.370 and 702 KAR 5:020 adjusted by current year second month growth in transported students.

[~~(15) "Vocational educational deduct" means a deduct factor to be applied against the per pupil guaranteed base funding in those instances where a student spends a portion of the school day at a state-operated vocational center.~~]

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Property assessments from the Department of [~~Property Taxation,~~] Revenue [~~Cabinet~~] provided pursuant to KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported on the Superintendent's Annual Attendance Report (SAAR) [~~by the Pupil Attendance Branch, Division of Finance, Department of Education~~];

(e) Prior year adjusted average daily attendance (AADA) reported on the SAAR [~~by the Pupil Attendance Branch, Division of Finance, Department of Education~~] (calculated according to the formula in subsection (4)[~~(3)~~] of this section);

(f) The growth factor report [~~from the Pupil Attendance Branch, Division of Finance, Department of Education~~];

(g) Transportation funding calculated pursuant to KRS 157.370 and 702 KAR 5:020 [~~reported by the Division of Pupil Transportation, Department of Education~~];

(h) The prior year average daily membership of students approved for free lunch [~~number of at-risk students~~] reported through the student information system [~~by the Division of School and Community Nutrition, Department of Education~~];

(i) The number of exceptional students ages five (5) through twenty (20) in each disability category on December 1 of each year as reported through the student information system [~~by the Division of Exceptional Children Services, Department of Education~~];

(j) The number of LEP students as reported through the student information system [~~Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education~~]; and

(k) The state equalization amount as provided in the biennial budget.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year under KRS 157.440[~~(1)(a)~~]

and the current year;

(b) Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Percentage reduction in the allotments may be made to at-risk student, exceptional child, LEP, and home and hospital instruction amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

(3) If the current year ADA for the school month as defined by KRS 158.060(1) which contains the most days in January exceeds the prior year AADA plus growth by three (3) percent, provided the difference is at least 100 students in ADA, the district may request a recalculation of its SEEK allotment by submitting an application to the Department of Education. Any adjustments in SEEK allotments approved pursuant to this provision shall be proportional to the remaining days in the school year and subject to available funds allocated for this purpose.

(4) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Average daily attendance (ADA) as defined in KRS 157.320(1) [~~shall be the aggregate days attendance as reported by local school districts divided by the number of school days taught as reported by local school districts~~].

(b) Adjusted average daily attendance shall be:

1. The ADA minus[~~plus~~];

2. The [~~shared time ADA as reported by local school districts minus;~~

~~3. The~~] ADA for noncontract, nonresident students as reported by local school districts [~~minus~~];

3. [~~4. The release time as reported by local school districts minus;~~

~~5.~~] One-half (1/2) of the total aggregate kindergarten days attendance [~~as reported by local school districts~~] divided by the number of days taught [~~minus~~]; and

4.[~~6.~~] The ADA for over-age students and under-age students not qualifying for funding pursuant to 702 KAR 7:125 plus [~~as reported by local school districts~~].

(5)[~~(4)~~] The SEEK calculation shall be determined as follows:

(a) Calculated base SEEK funding shall be:

1. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;

2. The prior year AADA plus growth plus;

3. The at-risk student amount plus;

4. The exceptional child amount plus;

5. The home and hospital instruction amount plus;

6. The transportation funding plus;

7. The LEP student amount.

(b) The calculated [~~total~~] state SEEK portion [~~base~~] shall be the calculated base SEEK funding minus the local effort required pursuant to KRS 157.390(5)[~~160.470(12)(a)~~]. The value of real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four (4) percent plus the value of current year new property.

(c) The total state SEEK funding amount shall be:

1. The calculated [~~total~~] state SEEK Portion [~~base~~] plus;

2. The total state Tier I funding (in accordance with subsection (6) of this section) plus[~~minus~~];

3. [~~The vocational education deduct amount (in accordance with subsection (7) of this section) plus;~~

~~4.~~] The hold harmless provision if provided in the biennial budget plus;

4.[~~5.~~] The prior year adjustments (if any) minus;

5.[~~6.~~] The pro rata adjustments under KRS 157.430 (if any).

(6)[~~(5)~~] The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)[~~(a)~~] shall be [~~guaranteed base funding per KRS 157.360(1)~~]:

(a) The calculated [~~guaranteed~~] Base SEEK Funding times [~~amount calculated pursuant to KRS 157.360(1) plus~~];

[~~(b) The calculated at-risk, exceptional child, home and hospital, and transportation amounts times;~~]

(b)[~~(c)~~] Fifteen (15) percent divided by;

(c)[~~(d)~~] The greater of the state equalization amount and the local district per pupil assessment.

(7)[~~(6)~~] State Tier I [~~and Tier II~~] funding formula[~~formulas~~].

(a)1. The total Tier I revenue shall be the total calculated base SEEK funding pursuant to KRS 157.360 times the maximum Tier I participation of fifteen (15) percent pursuant to KRS 157.440(1)(a);

2. The total per pupil Tier I revenue shall be the total Tier I revenue divided by the prior year AADA plus growth;

3. The state portion per pupil Tier I funding shall be the total per pupil Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget.

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate under KRS 157.440(1)(a), the state Tier I funding formula shall be as follows:

1. The levied Tier I equivalent tax rate shall be the levied equivalent tax rate minus the required minimum [~~thirty (30) cents~~] equivalent tax rate under KRS 160.470[~~(12)(a)~~] and [~~five (5) cents levy under~~] KRS 157.620(1)(a) and other equivalent tax rates restricted to the building fund as authorized by the General Assembly;

2. The per pupil total Tier I revenue shall be the levied Tier I equivalent tax rate times the state equalization amount;

3. The state portion per pupil Tier I funding shall be the per pupil total Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget.

[~~(c) The Tier II local revenue (not subject to state equalization) shall be calculated as follows:~~

~~1. The levied equivalent tax rate minus;~~

~~2. The required minimum thirty (30) cents equivalent tax rate under KRS 160.470(12)(a), the five (5) cents levy under KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate times;~~

~~3. The total district assessment of property and motor vehicles.~~

~~(7) The vocational education (voc ed) deduct formula shall be as follows:~~

~~(a) The per pupil deduct amount shall be:~~

~~1. The total state SEEK base divided by;~~

~~2. The calculated base SEEK funding times;~~

~~3. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;~~

~~4. The voc-ed deduct percentage as provided for in the biennial budget.~~

~~(b) The total voc-ed deduct amount shall be the per pupil deduct amount times the voc-ed ADA.~~]

Section 3. Calculation of State Equalization for the Facilities Support Program of Kentucky (FSPK) and Other Equalized Levies Restricted to the Building Fund [~~Calculation~~].

(1) Data required for the equalization [~~FSPK calculation~~] formula shall include:

(a) Property assessments from the Department of [~~Property Taxation,~~] Revenue [~~Cabinet~~], as required by KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA [~~as reported by the Pupil Attendance Branch, Division of Finance, Department of Education~~];

(d) Total annual debt service for school building revenue bonds; and

(e) State equalization amount.

(2) Assumptions used in the FSPK calculation shall include:

(a) A school district shall not receive state equalization funds until the full [~~five (5) cent~~] equivalent tax required for participation has been levied;

(b) A school district which has levied the required [~~a five (5) cent~~] equivalent tax for building purposes under KRS 157.620[~~(1)(a)~~] shall qualify to receive state equalization funding

when the district's outstanding debt service as of October 1 of each odd-numbered year is within $10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.

(3) The FSPK eligibility calculation shall be as follows:

(a) The [~~total~~] revenue available for debt service shall be the amount generated by the required [~~a five (5) cent equivalent~~] tax levy under KRS 157.440[~~620(1)(a)~~].

(b) The debt service amount needed for equalization shall be the total revenue available for debt service minus the total current year debt service (from school district's outstanding school revenue bond issues).

(c) If the calculation in paragraph (b) of this subsection is a positive amount, the district shall not be eligible for equalization.

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows:

(a) The per pupil state equalization amount shall be the maximum eligibility amount (which is the state equalization amount times the required tax levy under KRS 157.440[~~.0005~~]) minus the local effort (which is the per pupil assessment times the required equivalent tax levy under KRS 157.440[~~.0005~~]).

(b) The prorated state FSPK amount shall be:

1. The per pupil state equalization times;

2. The prior year AADA plus growth times;

3. The pro rata adjustments due to an appropriation in the biennial budget.

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).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, at 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 written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes calculations necessary to distribute funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.035 and KRS 156.070 that set forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and disbursement of state appropriations.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the distribution of funds to school districts as required by KRS 157.360 and 157.370. It identifies the components (assessment, average daily attendance, at-risk students, transportation, etc) of the SEEK funding formula and calculations necessary to distribute the SEEK funds to school districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the calculations used in the SEEK process as required by KRS 157.360 and 157.370.

(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 provides clarification on definitions of the components used in the SEEK funding formula. It adds the ability for a growing district meeting the established criteria to request a recalculation of its SEEK allotment. In addition, it establishes an improved method for establishing value of real estate used in the calculation of local effort when determining the Calculated State SEEK portion. The amendment also incorporates some housekeeping corrections to properly reflect appropriate elements that are included in the SEEK regulation and work performed by the appropriate division.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the requirements of funding under the SEEK formula.

(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 SEEK funding formula.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to school districts more clarity in the specifics for the calculation of the SEEK funding.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(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 districts by incorporating a real estate value used in the determination of Calculated State SEEK Portion that is responsive to limitations in KRS 160.470 and by acknowledging continuing growth in student attendance.

(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: There are no actions necessary for school districts other than those that experience attendance growth in accordance with the amendment will need to request a recalculation of their SEEK allotment. Kentucky Department of Education staff will need to implement and revise calculation programs to reflect the amendments to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts. The cost for funding the additional attendance growth provision will vary by actual changes in attendance and any amount allocated by the General Assembly. The cost for the amendment of local effort used in the Calculated State SEEK Portion cannot be determined until new assessment rates are established by the Department of Revenue. The costs will vary from year to year, but if the amendment had been in place for the 2007-2008 the $43 million lapse in the SEEK appropriation would have been reduced by $6.5 million dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have the guidance to support the numbers used in the SEEK formula and will know the source of the numbers used in the calculation. They will benefit from a more timely recognition of continuing student attendance growth and an improved method for determining local effort. Department of Education staff will have updated regulations that support the SEEK funding formula.

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

(a) Initially: The proposed amendment will require some technical changes to the programming software, but these changes will be performed in the normal course of work and not incur any additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The SEEK allocation in the state General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Kentucky Board of Education has requested an additional $1,000,000 in each year of the next biennium to fund the continuing attendance growth provision. However, there will be no distribution of funds under that provision if there is no funding specifically approved for that purpose. While it does not require an increase in funding, a reduction in the lapse of SEEK appropriations is anticipated due to the new real estate value used in the Calculation of State SEEK Portion.

(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.

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 156.035; 156.070; 157.320; 157.360; 157.370; 157.390; 157.410; 157.430; 157.440; 157.615; 158.135; 160.470; 160.476;

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 additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation depends greatly on the assessment values that are established by the Department of Revenue. No additional costs are expected other than any specific allocation made to fund the continuing attendance growth provision.

(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)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;

(5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;

(6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;

(7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on a member school;

(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;

(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;

(13)(a) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and

(b) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and

(15) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1)

KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, tournament rules, and due process procedures of the KHSAA Handbook, Fall 2008[~~2007~~], September 10,2007, shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, Fall 2008[~~2007~~], September 10, 2007, Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, 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).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 12, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 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 written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(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: These amendments make changes to the document incorporated by reference, in the KHSAA Constitution and in KHSAA Bylaws 4, 6, 14, 25, 26 and 32 as adopted by the KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 school districts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as

from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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

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)

703 KAR 5:001. Assessment and accountability definitions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment and accountability program. This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program.

Section 1. Definitions. (1) "A1 school" means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making council. An A1 school is not a program operated by, or as a part of, another school.

(2) "A2 program" means a district-operated, totally vocational-technical program, where the membership is counted in other schools.

(3) "A3 program" means a district-operated, totally special education program.

(4) "A4 program" means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).

(5) "A5 program" means an alternative program which is a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 program typically include:

(a) Actual dropouts returning to an alternate educational environment;

(b) Potential or probable dropouts;

(c) Drug abusers;

(d) Physically abused students;

(e) Discipline problem students;

(f) Nontraditional students (e.g., students who have to work during the school day); or

(g) Students needing treatment (e.g., emotional/psychological).

(6) "A6 program" means a district-operated instructional program in a nondistrict-operated institution or school.

(7) "A2-A6 program" means a program which is classified as A2, A3, A4, A5, or A6.

(8) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).

(9) "Accountability index" means the statistic defined in KRS 158.6457(1).

(10) "Accountability level" means elementary (grades end of primary/3, 4, and 5), middle (grades 6, 7, and 8), or high school (grades 9, 10, 11, and 12).

(11) "Adequate yearly progress in both reading and mathematics" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in reading and mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A school classification of any category of Progressing or meets goal in the CATS biennial or midpoint classification, whichever occurred more recently, at the elementary and middle school levels; or for a school in the assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade-level configuration;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as follows:

YEAR	GRADUATION RATE GOAL
2002	71.00
2003	73.25
2004	75.50
2005	77.75
2006	80.00
2007	82.25
2008	84.50
2009	86.75
2010	89.00
2011	91.25
2012	93.50
2013	95.75
2014	98.00

; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(12) "Adequate yearly progress in mathematics" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A school classification of any category of progressing or

meets goal in the CATS biennial or midpoint classification, whichever occurred more recently, at the elementary and middle school levels; or for a school in the assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade-level configuration;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(13) "Adequate yearly progress in reading" means required performance of each school or district in obtaining:

(a) Annual measurable objectives in reading in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;

(b) A school classification of any category of Progressing or Meets Goal in the CATS biennial or midpoint classification, whichever occurred more recently, at the elementary and middle school levels; or for a school in the Assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade-level configuration;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(14) "Alternate assessments[~~portfolio~~]" means components [~~that component~~] of the assessment system designed for students with legally-identified disabilities who cannot with the assistance of available accommodations, modifications, or both participate in the regular curriculum.

(15) "Alternate assessment [~~portfolio~~] scores" means the scores for alternate assessments assigned by teachers, contractors, or scores reassigned through state scoring review procedures[~~, to a collection of best pieces of student work assembled through the instructional process~~].

(16) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2009-2010[~~2001-2002~~] at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014, with the calculated points defining this line rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(17) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 2006-2007 and 2007-2008[~~1998-99 and 1999-2000~~] school years, and is that number against which progress on the accountability index shall be measured.

(18) "Comprehensive school improvement plan" means a data driven and research-based framework developed by the school which contains specific recommendations from the scholastic audit team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(19) "Confidence interval" means a range of scores determined for which there is a designated percent confidence that a school or district score falls within this range.

(20) "District evaluation team" means one (1) or more scholastic audit teams as established in 703 KAR 5:120.

(21) "Full academic year for a district" means a district is accountable for any student who is enrolled in the district any 100 instructional days from the district's first instructional day of the school year through the first day of the testing window for the appropriate accountability level established by the district.

(22) "Full academic year for a school" means a school is accountable for any student who is enrolled in the school any 100 instructional days from the first instructional day of the school year through the first day of the testing window.

(23) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(24) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. If a school's baseline is above 100, the goal line means a horizontal line at 100 minus one (1) standard error of measurement. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(25) "Graduation rate" means the quotient of: {number of current year grade 12 completers (standard diploma within four (4) years, including students with disabilities whose IEPs stipulate they will need more than four (4) years to obtain a standard diploma)} divided by {number of current year grade 12 completers (includes standard diplomas plus certificates of completion), plus the number of current year grade 12 dropouts, plus the number of dropouts from the current 12th grade that dropped out as 11th graders, plus the number of dropouts from the current 12th grade class that dropped out as 10th graders, plus the number of dropouts from the current 12th grade class that dropped out as 9th graders}.

(26) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2008-2009 and 2009-2010[~~2000-2001 and 2001-2002~~] school years.

(27) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(28) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(29) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(30) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(31) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(32) "Meets goal" means a school with a growth accountability index that meets or exceeds its goal point and the school meets the dropout and novice reduction requirements of 703 KAR 5:020, Section 8.

(33) "No child left behind improvement school or district" means a school or district that fails to make adequate yearly progress for two (2) consecutive years in the same content area, reading or mathematics.

(34) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.6451(1)(c), (d), and (f).

(35) "Participation in state-required assessments" means making a good faith effort by completing four multiple-choice items or responding to at least one constructed-response item in the reading and mathematics assessments combined for the appropriate grade level.

(36) "Participation rate" means the percent of students who participated in the state-required assessments.

(37) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(38) "Reward share" means the unit of money as appropriated by the General Assembly to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(39) "Safe harbor" means for a school or district that has not met the reading or mathematics annual measurable objective, that

the school or district is considered to have met the objective in reading or mathematics if the school or district reduces its percent of total students or subpopulation(s) (whichever group(s) did not meet the reading or mathematics annual measurable objective), scoring below proficient by ten (10) percent; and students in the same population or subpopulation(s) demonstrate improvement or obtain a 100 or higher on the prior year academic index.

(40) "Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

(41) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(42) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth as defined in 703 KAR 5:020.

(43) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The comprehensive school improvement plan;

(b) State assessment results;

(c) Federal accountability results;

(d) Student achievement data;

(e) Portfolio writing analysis data;

(f) School survey data;

(g) The school report card;

(h) District technology inventory;

(i) School handbook and master schedule;

(j) School-based decision-making policies and meeting minutes;

(k) Teacher lesson plans;

(l) District evaluation plan;

(m) Curriculum alignment documents;

(n) Examples of student work; and

(o) A listing of professional development activities.

(44) "School recognition points" means accountability index scores of fifty-five (55), sixty-six (66), seventy-seven (77), eighty-eight (88), and 100 on the accountability index scale used to recognize school standing.

(45) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(46) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(47) "Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing comprehensive school and district improvement plans.

(48) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(49) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(50) "Statistical concordance model" means a procedure used for adjusting an accountability index in order to compare goals lines reported for the 2006-2007 and 2007-2008 biennium.

(51) "Student achievement levels" means categories of student learning in each of the content areas, including low novice[~~nonperformance~~], medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(52)[~~(51)~~] "Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state's proficient level of achievement on state assessments and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who is age three (3) to twenty-one (21), is enrolled or preparing to enroll in an elementary school or secondary school and:

(a) Was not born in the United States or, whose native language is a language other than English;

(b) Comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency;

(c) Is Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the student's level of English language proficiency; or

(d) Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant.

(53)[~~(52)~~] "Sufficient size for calculating participation rates" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least sixty (60) students in the subpopulation in these grades combined.

(54)[~~(53)~~] "Sufficient size for making comparisons to annual measurable objectives" means that:

(a) A school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered; and

(b) At least sixty (60) students in the subpopulation in these grades combined or the subpopulation constitutes at least fifteen (15) percent of the students in these grades combined.

(55)[~~(54)~~] "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(56)[~~(55)~~] "Testing windows[~~window~~]" means periods[~~a period~~] of time designated annually by the Kentucky Department of Education within which all state-required assessment shall be administered.

(57)[~~(56)~~] "Title I school or district" means a school or district eligible for and receiving Title I funds.

(58)[~~(57)~~] "Writing portfolio score" means the score assigned by teachers, or score reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

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).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 12, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 2p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program. A single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to provide definitions for implementation provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB)

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific definitions for the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.,

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specifics definitions used in the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(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 provides updated definitions for the statewide assessment and accountability program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide current definitions for the state assessment and accountability program.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by providing definitions for the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to specifics to assist in the implementation of the requirements of the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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 amendments helps clarifies specific terminology and assist schools and districts in understanding the requirements of the statewide assessment and accountability program.

(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): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky educators and stakeholders will have a definition guide.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds and federal assessment funds under NCLB.

(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 funds are needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish 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 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)? 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 158.6455 "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

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

703 KAR 5:020. The formula for determining school accountability.

RELATES TO: KRS 158.145, 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes a single assessment system with two (2) accountability dimensions: one (1) addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and uniform commercially-available norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows:

(a) Reading at grades end of primary/3, 4, 5, 6, 7, 8, and 10;

(b) Mathematics at grades end of primary/3, 4, 5, 6, 7, 8, and 11;

(c) Science at grades 4, 7, and 11;

(d) Social studies at grades 5, 8, and 11;

(e) Arts and humanities at grades 5, 8, and 11;

(f) Practical living/vocational studies at grades 4, 7, and 10;

(g) On-demand writing at grades5, 8 and 12; and

(h) Writing portfolio at grades 4, 7, and 12.

(2) The commercially available norm-referenced tests shall include a uniform test of reading/language arts and mathematics components administered at the end of primary (grade 3), EXPLORE at grade 8, PLAN at grade 10, and beginning in 2007-2008, the ACT at grade 11 and WorkKeys as an optional test at grades 10, 11, or 12. [~~At the elementary level, districts shall identify a grade level, select a commercially-available norm-referenced test (NRT) approved by the Kentucky Department of Education, and administer the reading and mathematics components. School and district results shall be publicly reported and individual student results communicated to parents for all administered tests listed in this subsection. The Kentucky Department of Education shall provide districts a per pupil allocation to support the purchase of the elementary school level commercially-available norm-referenced test.~~]

(3) Alternate assessment at grades end of primary/3, 4, 5, 6, 7, 8, 10, 11, and 12 shall measure the same content areas as state-required assessments.

(4) Required participation in the National Assessment of Educational Progress (NAEP)[(~~NEAP~~)]. If a school is selected by the U.S. Department of Education or its designated contractors to participate in the state NAEP[~~NEAP~~] in reading, mathematics, science and writing at grades four (4) and eight (8), the school shall participate fully.

Section 2. Academic and Nonacademic Index Calculations. (1) For purposes of calculating a school's academic indices, the school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades. For state-required high school assessments administered in the fall, schools shall be held accountable based on students who had been enrolled for a full academic year in the prior school year. The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Low Novice (reading, mathematics, science, social studies, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies and alternate assessment)[~~Nonperformance - if a total open-response or writing prompt raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing portfolio or the alternate assessment component, if a raw score is less than one (1) and the score converts to less than medium novice, it shall be assigned a score of zero~~];

(b) Medium novice (reading, mathematics, science, social studies, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies, and alternate assessment) shall be assigned a score of thirteen (13);

(c) High novice (reading, mathematics, science, social studies, writing on-demand, writing portfolio, and alternate assessment) shall be assigned a score of twenty-six (26);

(d) Low apprentice (reading, mathematics, science, social studies, writing on-demand, writing portfolio, and alternate assessment) shall be assigned a score of forty (40);

(e) Medium apprentice (reading, mathematics, science, social studies, writing on-demand, writing portfolio, arts and humanities, practical living and vocational studies, and alternate assessment) shall be assigned a score of sixty (60);

(f) High apprentice (reading, mathematics, science, social studies, writing on-demand, writing portfolio, and alternate assessment) shall be assigned a score of eighty (80);

(g) Proficient in all content areas shall be assigned a score of 100, and distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas in grades 4, 5, 6, 7, 8, 10, 11, and 12 except arts and humanities, practical living and vocational studies, and writing on-demand, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns fifty (50) percent of the weight of the scores from open-response items and fifty (50) percent of the weight from multiple-choice items.

(3) For grade end of primary/three (3) content areas of reading and mathematics, and for grades five (5), eight (8), and eleven (11) content area of arts and humanities, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns thirty-three (33) percent of the weight of the scores from the open-response items and sixty-seven (67) percent of the weight from multiple-choice items. The writing score shall be based on a scoring method in which the on-demand writing and the writing portfolio each shall contribute fifty (50) percent to the writing index. Practical living and vocational studies shall be based only on multiple-choice items.

(4) The values for attendance rate shall be the actual percentage reported. The values entered into formula calculations for retention rate at elementary and middle school and dropout rate at middle school shall be 100 minus the actual percentage calculated.

(5) Beginning with reporting in 2008-2009, graduation rate at high school shall be used for retention and dropout calculations and shall be calculated as required by the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. Kentucky values shall be added to the graduation rate as follows:

(a) Students receiving Certificates of Attainment shall earn one (1) point;

(b) Students graduating by age twenty-one (21) shall earn one (1) point;

(c) Students completing a secondary GED shall earn one-half (.5) point; and

(d) Students graduating in three (3) years or less as defined in the student's Individual Learning Plan shall earn an additional one-half (.5) point for a total of one and one-half (1.5) points.

(6) High school nonacademic data shall include transition to adult life data.

(7) Beginning with reporting in 2009-2010[~~2008-2009~~] the values for transition to adult life shall be a system of base and bonus points. The points shall be based upon those graduating students who have a completed Individual Learning Plan (ILP) and those graduates who:

(a) Meet or exceed the ACT benchmarks set by the Council on Postsecondary Education;

(b) Have indicated a workforce or military career path on their Individual Learning Plan (ILP) and earn a silver level Kentucky Employability Certificate; or

(c) Meet or exceed the transition criteria for the Kentucky Certificate of Attainment.

(8) A bonus point shall be added to the transition to adult life calculation for each graduate who:

(a) Passes three (3) Advanced Placement exams with scores of three (3) or greater;

(b) Receives an International Baccalaureate Diploma;

(c) Receives a Commonwealth Diploma;

(d) Receives a National Merit Finalist designation; or

(e) Has an Individual Learning Plan (ILP) that indicates a workforce or military career path and who earns:

(i) A gold level Kentucky Employability Certificate;

(ii) A Kentucky Occupational Skill Standards Certificate; or

(iii) National industry certification.

(9) Bonus points shall be added to the base transition to adult life calculation. Bonus and base points shall be divided by twice the number of graduates and capped at 100 points.

(10) Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(a) Attendance, primary through grade twelve (12);

(b) Retention rates, grades four (4) through eight (8);

(c) Dropout rates, grades seven (7) through eight (8);

(d) Graduation rate that reflects dropout and retention grades

nine (9) through twelve (12); and

(e) Successful transition to adult life for the graduating students.

(4) Scores from alternate assessments shall be included in the academic indices so that the data from an alternate assessment completed by a student eligible to participate contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program. The same requirement shall be applied to calculations required by "No Child Left Behind Act of 2001" 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of academic indices and the nonacademic index for elementary, middle, and high schools. Middle schools shall have an additional component, an index created from EXPLORE. High schools shall have an additional component, an index created from the PLAN and ACT.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. The accountability index of each elementary and middle school shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - grade five 5)

Content Area	Weight
Reading	20.00%[~~22.00%~~]
Mathematics	20.00%[~~22.00%~~]
Science	14.00%[~~14.50%~~]
Social studies	14.00%[~~14.50%~~]
Writing On-Demand	7.25%
Writing Portfolio	7.25%
Arts and Humanities	5.00%
Practical Living and Vocational Studies	5.00%
Attendance Rate	1.50%
Retention Rate	1.00%
National Norm-Referenced Test	5.00%
	100.00%

(b) Middle school (grades 6 - 8)

Content Area	Weights
Reading	18.00%[~~19.00%~~]
Mathematics	18.00%[~~19.00%~~]
Science	14.00%[~~15.00%~~]
Social studies	14.00%[~~15.00%~~]
Writing On-Demand	7.25%[~~7.50%~~]
Writing Portfolio	7.25%[~~7.50%~~]
Arts and Humanities	6.50%[~~6.75%~~]
Practical Living and Vocational Studies	6.50%[~~6.75%~~]
Attendance Rate	2.00%
Retention Rate	1.00%
Dropout Rate	0.50%
ACT Middle School Index	5.00%
	100%

(c) High school (grades 9 - 12)

Content Area	Weight
Reading	14.00%
Mathematics	14.00%
Science	14.00%
Social studies	14.00%
Writing On-Demand	7.00%
Writing Portfolio	7.00%
Arts and Humanities	7.00%
Practical Living and Vocational Studies	7.00%
Attendance Rate	3.00%
Graduation Rate	4.00%
Successful Transition to Adult Life	4.00%
ACT High School Index	5.00%
	100%

(4) The academic index for each content area and the nonacademic index shall be determined by summing their components as described in this section.

(5) The accountability index for all grade ranges shall be calculated by aggregating the data from all of the students in the school.

(6) Beginning in 2008-2009, the elementary national norm-referenced test (NRT) index shall be included and applied to the Total Battery Composite National Percentile as follows:

NRT National Percentile Ranges	1-24	25-29	30-34	35-39	40-44	45-49	50-74	75-99
Weight	0	13	26	40	60	80	100	140

(7) Beginning in 2008-2009, the middle school accountability index shall include the EXPLORE at grade 8. The ACT middle school index shall include EXPLORE composite scores. Student performance standards comparable to those used in academic indices and described in Section 2 of this administrative regulation shall be applied to composite scores as follows:

EXPLORE Ranges	0-2	3-5	6-7	8-10	11-13	14-15	16-19	20-25
Weight	0	13	26	40	60	80	100	140

(8) The high school accountability index shall include beginning in 2006-2007 the PLAN and beginning in 2007-2008 both PLAN and ACT as follows:

(a) Student performance standards comparable to those used in academic indices and described in Section 2 of this administrative regulation shall be applied to composite scores as follows:

PLAN Ranges	0-3	4-6	7-9	10-12	13-15	16-17	18-24	25-32
ACT Ranges	0-3	4-7	8-11	12-14	15-17	18-20	21-27	28-36
Weight	0	13	26	40	60	80	100	140

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The ACT High School index shall be based on the average of the indices beginning in 2007-2008 for both PLAN and ACT composite scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 3, 4, and 5 at the elementary level, grades 6, 7, and 8 at the middle school, or grades 9, 10, 11, and 12 at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school or school district may request a waiver of the requirement of subsection (1) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the biennium for which the waiver is requested.

Section 5. Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) Schools reconfigured after the 2006-2007[~~1998-1999~~] school year shall be assigned a baseline calculated from the 2006-2007 and 2007-2008[~~1998-1999 and 1999-2000~~] aggregate district level data for the appropriate level (elementary, middle, or high school). [~~Calculations shall be based on appropriate weights used in reporting prior to 2006-2007.~~]

(3) A school district shall notify the Department of Education of any school that is planning for the upcoming school year to be a reconfigured school as provided in this administrative regulation by June 30 prior to the beginning of the school year in which the reconfiguration is to occur.

(a) For the purpose of assigning a school classification of meets goal, progressing, or in need of assistance, a school that is considered a reconfigured school in either year of a biennium after 2008[~~2000~~] on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school's classification.

(b) To determine whether a reconfigured school meets adequate yearly progress [~~for the first three (3) years the school is reconfigured~~], the determination shall be made based on whether the school meets the annual measurable objectives established in reading and mathematics and has a participation rate for the school and its subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., of at least ninety-five (95) percent. When a school's other academic indicator can be computed based on the school's student population [~~Beginning with the fourth year of the school's reconfiguration~~], the school shall meet all requirements for making adequate yearly progress as provided in Section 10(2) of this administrative regulation.

(c) In the alternative to paragraph (b) of this subsection, a school district may submit to the Department of Education a plan for reconstituting data necessary to determine whether a reconfigured school has met all requirements for meeting adequate yearly progress taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in annual calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) At the conclusion of interim accountability model, to establish expected levels of growth for each school, a straight line shall be drawn from a school's baseline minus one (1) standard error of measurement established in the 2006-2007 and 2007-2008[~~1998-1999 and 1999-2000~~] biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 2006-2007 and 2007-2008[~~1998-1999 and 1999-2000~~]) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to three and five tenths (3.5) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. The annual average dropout rate shall include students as provided in KRS 158.6455(1)(b) A school shall not receive rewards if its dropout rate exceeds five (5) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by three (3) [~~seven (7)~~]. The maximum allowable percent novice for each biennium shall be calculated as follows:

(a)[~~Year 2002 = baseline percent novice minus the required novice reduction factor;~~

~~(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);~~

~~(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);~~

~~(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);~~

~~(e)~~] Year 2010 = baseline percent novice minus the required novice reduction factor [~~multiplied by five (5)~~];

(b)[(f)] Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by two (2)[six (6)]; and

(c)[(g)] Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by three (3)[seven (7)].

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2010[2002], the highest scoring five (5) percent of all schools shall be designated as commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice reduction requirements of this section. If not otherwise receiving rewards in recognition for growth, a commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2010[2004], a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(5) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed $2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal: number of certified full-time equivalent (FTE) staff times three (3) shares;

(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;

(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and

(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 2007-2008[1999-2000] school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) measuring the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments. The starting points for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades and producing school level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;

(b) School classification criteria as described in subsection (5)(b) of this section;

(c) Graduation rates; and,

(d) Participation rates.

(3) If a school does not meet an annual measurable objective based on the current year aggregated average of the performance of the elementary, middle, or high school students, the aggregated average may be computed based on the most recent two (2) or three (3) years of student performance data in reading and mathematics.

(4) These statistics shall be used to determine if a school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(11) of this administrative regulation.

(5) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:

(a) The school and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5:001;

(b) The school had a school classification of any category of progressing or meets goal in the CATS biennial or midpoint classification, whichever occurred more recently, at the elementary and middle school accountability levels; or for a school in the assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade level configuration as defined in 703 KAR 5:001;

(c) The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5:001; and

(d) The school had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq. Participation rate may be computed for the current year or, as an average of the most recent two (2) or three (3) years, to reach ninety-five (95) percent.

(6) No child left behind (NCLB) improvement school determination. A school shall be identified as a "NCLB improvement school" if for two (2) consecutive years the school fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 - reading or mathematics.

(7) Reward or recognition. For a school meeting adequate yearly progress for two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

(8) Before identifying a school as a no child left behind improvement school and implementing consequences required by 20 U.S.C. 6301 et seq., the local school district shall provide the school with an opportunity to review the school-level data on which the proposed identification is based. Not later than thirty (30) days after the district provides the school with the opportunity to review

such school-level data, the district shall make public a final determination on the status of the school with respect to the identification.

(9) Confidence intervals. A school shall be considered to have met the annual measurable objective in reading or mathematics if:

(a) The percent of students scoring proficient or above in a school meets or exceeds the annual measurable objective in reading or mathematics; or

(b) The annual measurable objective falls within the ninety-nine (99) percent confidence interval placed around the school's percent of students proficient and above. If more than the current year aggregated average of the performance of the elementary, middle, or high school students is used to compute an annual measurable objective, the confidence interval shall also be based upon the same most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.

(10) Students included in participation rates. A student enrolled in a Kentucky public school on the first day of the testing window for the school shall be included in the calculation of the participation rates for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(11) Students included in determining whether a school meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a school for a full academic year shall be included in the school calculation of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(12) Annual Measurable Objectives in Reading and Mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be as follows.

	Elementary		Middle		High		Primary-08		Primary-12		7-12	
Year	Reading	Math	Reading	Math	Reading	Math	Reading	Math	Reading	Math	Reading	Math
2001-02	47.27	22.45	45.60	16.49	19.26	19.76	46.44	19.47	37.38	19.57	32.43	18.13
2002-03	47.27	22.45	45.60	16.49	19.26	19.76	46.44	19.47	37.38	19.57	32.43	18.13
2003-04	47.27	22.45	45.60	16.49	19.26	19.76	46.44	19.47	37.38	19.57	32.43	18.13
2004-05	53.86	32.14	52.40	26.93	29.35	29.79	53.14	29.54	45.21	29.62	40.88	28.36
2005-06	53.86	32.14	52.40	26.93	29.35	29.79	53.14	29.54	45.21	29.62	40.88	28.36
2006-07	53.86	32.14	52.40	26.93	29.35	29.79	53.14	29.54	45.21	29.62	40.88	28.36
2007-08	60.45	41.84	59.20	37.37	39.45	39.82	59.83	39.6	53.04	39.68	49.32	38.60
2008-09	67.04	51.53	66.00	47.81	49.54	49.85	66.53	49.67	60.86	49.73	57.77	48.83
2009-10	73.64	61.23	72.80	58.25	59.63	59.88	73.22	59.74	68.69	59.79	66.22	59.07
2010-11	80.23	70.92	79.60	68.68	69.72	69.91	79.92	69.80	76.52	69.84	74.66	69.30
2011-12	86.82	80.61	86.40	79.12	79.82	79.94	86.61	79.87	84.35	79.89	83.11	79.53
2012-13	93.41	90.31	93.20	89.56	89.91	89.97	93.31	89.93	92.17	89.95	91.55	89.77
2013-14	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school is identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq., including information that all students enrolled in the school have the option to transfer, at the district's expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as a NCLB improvement school, the local district shall require that school to provide supplemental services as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq. and consistent with all relevant Kentucky statutes, and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of three (3) full years after being identified, the local district shall plan for alternative school governance required by 20 U.S.C. 6301 et seq., and continue to provide services required in Section 11(1), (2), and (3) of this administrative regulation. If adequate yearly progress in both reading and mathematics is not made four (4) years after being identified as a NCLB improvement school, the alternative governance plan shall be implemented.

Section 12. Duration of Consequences. If a school identified as a NCLB improvement school makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after the identification, the school shall no longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

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).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 12, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 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 written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB)

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including types of assessments to be administered, grades and content areas to be assessed, weights of each assessment, and details of how schools will be held accountable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the requirement of a uniform elementary norm-referenced test (NRT) in reading/language arts and mathematics at end of primary/grade 3. It changes the weights of individual content areas in the school accountability formula to add a norm-referenced measure for 5% in the school accountability formula at elementary and middle school levels and provides specifics on how an NRT index will be calculated. The amendments rename the performance category of novice non-performance to low novice; delays the reporting of new measures for Transition to Adult Life until 2009-2010; and outlines how school baselines will be drawn at the conclusion of the interim accountability model.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in the state accountability system as promulgated by the Kentucky Board of Education on the recommendation of LRC's Education Assessment and Accountability Review Subcommittee.

(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 assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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 at the state level elementary and middle school accountability formulas.

(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): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Norm-referenced results provide national comparison data to schools, districts and parents and the results will be included in the state accountability program.

(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. The state is already spending money for elementary and middle school norm-referenced tests. A bid will be released to secure an elementary NRT vendor beginning in the 2008-2009 school year.

(b) On a continuing basis: Potential cost increases depend on a new contract that will be negotiated for an elementary NRT.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal (under NCLB) and state assessment funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: New contract for elementary NRT is unknown. Current funding covers the existing elementary NRT support to districts.

(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 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)? 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 158.6455 "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? Any additional costs are unknown until negotiated contract for statewide elementary norm-referenced test.

(d) How much will it cost to administer this program for subsequent years? Any additional costs are unknown until negotiated contract for statewide elementary norm-referenced test.

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)

703 KAR 5:060. Interim accountability model.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate an administrative regulation to establish a formula for school accountability and a school improvement goal for each school for the 2006-2007 and 2007-2008[~~1998-99 and 1999-2000~~] school years. This administrative regulation establishes procedures for determining successful schools, school rewards, and classifications of schools applied as school performance judgments.

Section 1. [~~Definitions. (1) "Accountability index" means the statistic that combines a school's academic, nonacademic, and other appropriate data into a single index.~~

~~(2) "Regression model" means a procedure used for predicting future performance based on past performance.~~

~~(3) "School" means an A1 school as defined in 703 KAR 5:040, Section 1(1).~~

~~(4) "Standard error of estimate" means the standard deviation of the predicted index scores from the prediction resulting from the regression analysis.~~

~~Section 2.~~] Interim Accountability Model (2006-2007, 2007-2008[~~1996-1997 - 1999-2000~~]). (1) After consultation with and review by the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall apply a statistical concordance [~~use an appropriate regression~~] model to establish [~~predicted or expected~~] accountability growth indices for the biennium ending in the 2007-2008[~~1999-2000~~] school year. [~~The basis of the predictions shall be data from the 1996-1997 and 1997-1998 school years.~~] Accepted statistical practices shall be applied.

(2) A school's adjusted[~~actual~~] accountability index for the biennium ending with the 2007-2008[~~1999-2000~~] school year shall be compared to its goal lines reported in 2006-2007 [~~predicted level of performance~~]. If a school's 2006-2008[~~1998-2000~~] biennium index equals or exceeds its 2006-2008 goal line[~~predicted 1998-2000 biennium index~~], the school shall be eligible to receive a reward if the school meets the dropout and novice criteria under KRS 158.6455[~~(5)(b)1~~].

(3) If a school's accountability index falls below its assistance line reported in 2006-2007 [~~predicted performance by at least one (1) standard error of estimate~~], a school shall be subject to the provisions of KRS 158.6455 and 703 KAR 5:120[~~(5)(b)2, including a review by a scholastic audit team, eligibility for school improvement funds, and a required school improvement plan~~].

(4) At the conclusion of the interim model, new baselines shall be generated from school and district nonadjusted average performance during the 2006-2007 and 2007-2008 biennium.

Section 2.[~~3.~~] Nonacademic Index Calculations. The values for attendance rate, [~~and~~] successful transition to adult life, and graduation rate shall be the actual percentage reported. In the elementary and middle school levels, the values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(1) Attendance, primary through grade twelve (12);

(2) Retention rates, grades four (4) through eight (8) [(~~12~~)];

(3) Dropout rates, grades seven (7) and eight (8) [~~through twelve (12)~~]; [~~and~~]

(4) Graduation rates, grades nine (9) through twelve (12); and

(5) Successful transition to adult life for the graduating students.

Section 3. Alternate Assessments[~~4. Alternative Portfolios~~]. Scores from alternate assessments [~~portfolios~~] shall be included in the academic indices so that the data from an alternate assessment[~~alternative portfolio~~] completed by a student eligible to participate with an alternate assessment[~~portfolio~~] contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels.

Section 4.[~~5.~~] Schools Not Conforming to the Standard Grade Configuration. (1) If a school does not have grades end of primary/three (3), four (4) and five (5) at the elementary level, grades six (6), seven (7) and eight (8) at the middle school level, or grades nine (9), ten (10), eleven (11), and twelve (12) at the high school level, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit for both state and federal accountability purposes.

[~~(2) A school or school district may request a waiver of the requirements of subsection (1) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by September 1, 1999.~~]

Section 5.[~~6.~~] Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school.

[~~Section 7. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.~~

~~(2) A school that would be considered a reconfigured school in the first year of the accountability cycle shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's nonacademic data.~~

~~(3) A school that is considered a reconfigured school in the second year of the accountability cycle shall have its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's nonacademic data.~~

~~(4) A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.~~

~~(5) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.~~

~~(6) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require~~

~~the tracking of individual student data. This request shall require the approval of each affected school council (or the principal, if a school does not have a council) and the local board of education upon the recommendation of the superintendent.~~

~~(7) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs.~~]

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).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 12, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 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 written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an interim accountability model as a two-year bridge to link data in the state assessment and accountability system following a period of significant system change. The regulation specifics a statistical concordance model to establish accountability growth indices for the biennium ending in 2007-2008 school year. At the conclusion of the interim model, new baselines shall be generated from school and district nonadjusted average performance during the 2006-2007 and 2007-2008 biennium. Regulation provides for the continuation of a single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB)

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including the necessary link to maintain the statewide assessment and accountability system during significant change.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of an interim accountability model for the state-wide assessment and accountability program which will be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(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 establishes an interim accountability model based on a statistical concordance methodology to maintain the statewide assessment and accountability system during significant change.

(b) The necessity of the amendment to this administrative regulation: Allows continuation of the statewide assessment and accountability program that implements the requirements of KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying an interim accountability model for statewide assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of an interim accountability model for the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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 link data from the statewide assessment and accountability system during system change and provide new school performance baselines at the conclusion of the interim model.

(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): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will continue the statewide assessment and accountability program and not risk loss of federal funds for its public schools.

(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.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds and Federal assessment funds under NCLB

(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 funding as mentioned above is expected to cover cost 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 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 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)? 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 158.6455 and "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

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

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 6:040. Elections and Voting Equipment Security Plan.

RELATES TO: KRS 117.015, 117.085, 117.086, 117.187, 117.275, 117.383, 42 U.S.C. 15481

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383, 42 U.S.C. 1548

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.383(1) requires the State Board of Elections to prescribe rules and administrative regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. 42 U.S.C. 15481, Section 301 of the Help America Vote Act of 2002, requires the states to maintain voting systems that preserve the privacy of the voter and the confidentiality of the ballot, produce a record of the election, and provides accessibility for individuals with disabilities. This administrative regulation establishes procedures for maintaining security in the election process ensuring the maximum degree of correctness, impartiality, and efficiency in elections and ensures that the voting systems used in the state are maintained in a condition to meet the requirements of 42 U.S.C.15481.

Section 1. General Provisions. (1) The County Board of Elections shall establish an election and voting equipment security plan covering all elections in the county and the security of all voting systems and equipment used in the county ensuring the maximum degree of correctness, impartiality, and efficiency of the procedures of voting and shall file the County Board of Elections Notice of Establishment of Elections and Voting Equipment Security Plan Form SBE 19, on or before the first day of August of 2008 and on or before the first day of March of each year beginning in 2009.

(2) The county boards of elections shall train all precinct election officers prior to each primary and general election on the procedures established by the county boards of elections to implement the Elections and Voting Equipment Security Plan during the training required by KRS 117.187.

Section 2. The Elections and Voting Equipment Security Plan shall include security measures in each of the following areas:

(1) The storage of election equipment hardware and software and related election materials, including maintaining the following:

(a) A list of all personnel with keys and access to the election equipment storage area;

(b) An access log including sign in and out times and dates of all personnel given access to the storage area;

(c) A list of all equipment by serial number and quantity; and

(d) An inventory record of each piece of voting equipment, including the following:

1. Serial number;

2. A history of repairs, replacements, and upgrades, if applicable, who performed and who witnessed the maintenance performed;

3. Current location and condition;

4. Precinct assignments for each election day; and

5. A detailed log of delivery to and from precincts on election day;

(2) The storage and tracking of paper ballots, providing an accounting for all ballots issued to a precinct on election day and a record of all security seal numbers used to seal ballot containers and tabulators;

(3) The processing and storage of voter registration and voting records in the clerk's office;

(4) Password administration, including designating member of the county clerk's staff as the "password administrator" to issue passwords, maintain a master list of all passwords issued, and reissue all passwords on a periodic basis;

(5) Absentee voting for mail-in ballots and in-house voting, pursuant to KRS 117.085 and 117.086;

(6) A checklist for precinct election officers to follow for opening and closing the precincts on election day, including:

(a) Designating a secure location in each precinct for the voting equipment to be stored upon delivery and until the precinct election officers arrive at the precinct;

(b) A procedure for placement of the voting equipment in the precinct to limit access to the voting equipment's power control, counter controls, and results storage media to only authorized personnel;

(c) A procedure to verify the serial numbers, security seals, and protective counter number of each piece of voting equipment prior to the opening of the polls;

(d) A procedure to count and verify all paper ballots, provisional ballots, and election supplies prior to the opening of the polls;

(e) A procedure to validate the number of voter activation devices after the polls have closed and secure the devices for transport back to the county clerk's office; and

(f) A procedure for securing and accounting for all voting equipment after the closing of the polls; and

(7) Securing and storing the voting equipment after Election Day and in between elections and maintenance of election materials for the period required pursuant to KRS 117.275.

Section 3. Incorporation by Reference. (1) "County Board of Elections Notice of Establishment of Elections and Voting Equipment Security Plan", SBE 19 (2/08), is incorporated by reference.

(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.

HON. TREY GRAYSON, Chair

APPROVED BY AGENCY: February 11, 2008

FILED WITH LRC: February 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502)573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for maintaining security in the election process ensuring the maximum degree of correctness, impartiality, and efficiency in elections required by KRS 117.383(1) and ensures that the voting systems used in the State are maintained in a condition to meet the requirements of 42 U.S.C.15481, Section 301 of the Help America Vote Act of 2002.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 117.383(1) and 42 U.S.C.15481, Section 301 of the Help America Vote Act of 2002.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 117.383(1) requires the State Board of Elections to prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. 42 U.S.C. 15481, Section 301 of the Help America Vote Act of 2002, requires the states to maintain voting systems that preserve the privacy of the voter and the confidentiality of the ballot, produce a record of the election, and provides accessibility for individuals with disabilities. This administrative regulation establishes security requirements for the storage and maintenance of voting equipment to ensure that the requirements of KRS 117.383 and 42 U.S.C.15481 are met.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation requires all county boards of elections to develop an elections and voting system security plan to ensure that the voting equipment is maintained in a secure manner and the election procedures are performed with the utmost attention to security.

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

(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters, registered voters, actual voters, all election officials and boards, all candidates for election, and the general public will be effected by this administrative regulation.

(4) 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 to an existing administrative regulation: Election officials will be required to develop a security plan to ensure the maximum degree of correctness, impartiality, and efficiency in elections and to ensure that the voting systems used in the State are maintained in a condition to meet the requirements of 42 U.S.C.15481. All voters, candidates, and the public will gain confidence in the voting equipment and election procedures used on Election Day.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: Each county will be responsible for developing an Elections and Voting Equipment Security Plan to meet the needs in the county. The plan itself will bear no costs; however, the counties may find it necessary to expend funds to improve storage facilities for voting equipment and election supplies, purchase additional security devices for securing voting equipment and election supplies, or any other expenses necessary to meet the requirements of the county's individualized security plan, KRS 117.383, and 42 U.S.C. 15481.

(b) On a continuing basis: As the counties are required to review and revise as necessary each county's Elections and Voting Equipment Security Plan, each county must assess what funds should be expended, if any, to maintain election security in the county to meet the requirements of the Plan, KRS 117.383, and 42 U.S.C. 15481.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The costs must be borne by the counties. The counties are paid a per precinct reimbursement from the state general fund pursuant to KRS 117.345.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

(2) State what unit, part, or division of local government this administrative regulation will affect: all election officials and boards.

(3) State the aspect or service of local government to which this administrative regulation relates: the conduct of elections.

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

(a) Revenues: See below.

(b) Expenditures: See below.

(c) Other Explanation: Each county will be responsible for developing an Elections and Voting Equipment Security Plan to meet the needs in the county. The plan itself will bear no costs; however, the counties may find it necessary to expend funds to improve storage facilities for voting equipment and election supplies, purchase additional security devices for securing voting equipment and election supplies, or any other expenses necessary to meet the requirements of the county's individualized security plan, KRS 117.383, and 42 U.S.C. 15481.

As each county is required to review and revise as necessary its Elections and Voting Equipment Security Plan, each county must assess what funds should be expended, if any, to maintain election security in the county to meet the requirements of the Plan, KRS 117.383, and 42 U.S.C. 15481.

The costs must be borne by the counties. The counties are paid a per precinct reimbursement from the state general fund pursuant to KRS 117.345.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15481, Section 301 of the Help America Vote Act of 2002.

(2) State compliance standards: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections and KRS 117.383(1) requires the State Board of Elections to prescribe rules and regulations to achieve the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(3) Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 15481 requires the states to maintain voting systems that preserve the privacy of the voter and the confidentiality of the ballot, produce a record of the election, and provides accessibility for individuals with disabilities.

(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 requires the county board of elections to develop a plan and file a notice with the State Board of Elections on or before August 1, 2008, and the first day of March of each year beginning in 2009 attesting that the county has established procedures for maintaining security in the election process ensuring the maximum degree of correctness, impartiality, and efficiency in elections required by KRS 117.383(1) and ensuring that the voting systems used in the State are maintained in a condition to meet the requirements of 42 U.S.C.15481, Section 301 of the Help America Vote Act of 2002.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The development of the security plan and the notice to the State Board of Elections are necessary to ensure that all of Kentucky's 120 counties are meeting the requirements of 42 U.S.C. 15481 and are in line with the dictates of KRS 117.383 that require the State Board of Elections to prescribe rules and regulations to achieve the maximum degree of correctness, impartiality, and efficiency in the procedures of voting. These requirements are also necessary to maintain and improve the general publics and voters' confidence in the election process.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:300. Common database.

RELATES TO: KRS 315.020, 315.035, 315.0351
STATUTORY AUTHORITY: KRS 315.035, 315.0351, 315.191(1)(a)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035 and 315.0351 require that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a)(f), minimum requirements to regulate and control pharmacists, pharmacist interns, pharmacy technicians, and pharmacies relating to drugs sold pursuant to a prescription drug order and to control the storage, retrieval, dispensing, refilling, and transfer of prescription drug orders within and between pharmacists and pharmacies.

Section 1. Definitions. (1) Common Database means information shared among pharmacists and pharmacies for the purpose of dispensing medications or providing other forms of pharmacist care to a patient.

Section 2. The use of a common database shall not constitute a transfer as defined in 201 KAR 2:165, provided that the following conditions are met:
(1) All pharmacies involved in the transactions pursuant to which the prescription is dispensed are under common ownership and utilize a common database;
(2) All pharmacies involved in the transactions pursuant to which the prescription is dispensed and all pharmacies engaging in dispensing functions are properly permitted in this state pursuant to KRS 315.035 or 315.0351.
(3) Any pharmacist who provides a pharmacy service on a prescription dispensed in Kentucky shall be licensed in Kentucky;
(4) The common database maintains a record of all pharmacists, pharmacist interns, and pharmacy technicians involved in the process of dispensing a prescription;
(5) The owner of the common database maintains a policy and procedure manual that governs its participating pharmacies, pharmacists, and pharmacy employees and that is available to the Board or its agents upon request within five (5) business days which shall include:
(a) A procedure detailing how each pharmacy and each pharmacist accessing the common database will comply with applicable federal and state laws, rules, and regulations;
(b) The procedure for maintaining appropriate records for regulatory oversight for tracking a prescription during each stage of the filling and dispensing process, identifying the pharmacists involved in filling and dispensing the prescription and counseling the patient, and responding to any requests for information made by the board;
(c) The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information; and
(d) A quality assurance program designed to objectively and systemically monitor, evaluate, and improve the quality and appropriateness of patient care through the use of a common database.
(6) Any pharmacist dispensing a prescription has at all times the right and obligation to exercise his independent professional judgment and is responsible for his actions and all those individuals the pharmacist supervises or should have supervised.

W. MICHAEL LEAKE, President
APPROVED BY AGENCY: February 14, 2008
FILED WITH LRC: February 14, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday March 25, 2008 at 9 a.m. at the Board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday March 18, 2008, five workdays prior to this 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 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 4:30 p.m. Monday March 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2820, fax (859) 246-2823.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation allows a common database in pharmacies under common ownership.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.020 and 315.191(a)(f).
(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for common database.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for common database in pharmacies under common ownership.
(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:
(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 effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates one pharmacy annually will be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The pharmacy will have to have set up policies and procedures regarding the common database.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The pharmacy will be able to provide medication more expediently to its patients.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred.
(b) On a continuing basis: No new costs will be incurred.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This

administrative regulation does not establish fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists and pharmacies that utilize a common database.

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 Pharmacy 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 315.020 and 315.191(a)(f) requires or authorizes the action taken by this 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? 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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 6:230. Little Sandy Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Little Sandy Correctional Complex.

Section 1. Incorporation by Reference. (1) "Little Sandy Correctional Complex Policies and Procedures," February 15, 2008, are incorporated by reference. Little Sandy Correctional Complex Policies and Procedures include:

LSCC 02-01-03	Fiscal Management Agency Funds (Added 2/15/08)
LSCC 06-01-01	Offender Records (Added 2/15/08)
LSCC 08-01-01	Occupational Exposure to Serious and Infectious Diseases (Added 2/15/08)
LSCC 11-02-01	Food Service Security (Added 2/15/08)
LSCC 11-06-01	Health Requirement of Food Handlers (Added 2/15/08)
LSCC 11-07-01	Food Service: Inspections and Sanitation (Added 2/15/08)
LSCC 13-02-03	Continuity of Care (Added 2/15/08)
LSCC 13-03-01	Use of Pharmaceutical Products (Added 2/15/08)
LSCC 13-13-01	Inmate Self Administration of Medication (Added 2/15/08)
LSCC 14-02-01	Legal Services Program (Added 2/15/08)
LSCC 15-01-01	Drug Abuse Testing (Added 2/15/08)
LSCC 16-01-01	Inmate Visiting (Added 2/15/08)
LSCC 16-02-02	Inmate Correspondence and Privileged Mail (Added 2/15/08)
LSCC 16-03-01	Inmate Telephone Communications (Added 2/15/08)
LSCC 17-01-01	LSCC Inmate Property Control (Added 2/15/08)
LSCC 18-02-01	Meritorious Housing (Added 2/15/08)
LSCC 19-01-01	Inmate Work Program (Added 2/15/08)
LSCC 22-02-01	Inmate Clubs and Organizations (Added 2/15/08)
LSCC 25-01-01	Pre-Release Program (Added 2/15/08)
LSCC 25-01-02	Inmate Release Process (Added 2/15/08)
LSCC 26-01-01	Citizen Involvement and Volunteer Services Programs (Added 2/15/08)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: February 11, 2008

FILED WITH LRC: February 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 24, 2008 at 10:30 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business March 31, 2008 to: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Phone (502) 564-8215, Fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Little Sandy Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs every aspect of the operations of the Little Sandy Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Little Sandy Correctional Complex employees and the inmate population as to their duties, rights, privileges, and responsibilities.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Little Sandy Correctional Complex, 236 employees and 1005 inmates, and all visitors to state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to implement the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational procedures will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: None

(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: Little Sandy Correctional Complex budgeted funds for this 2007 - 2008 biennium.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the operation of Little Sandy Correctional Complex.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

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

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 does not create any revenue for Little Sandy Correctional Complex.

(b) How much will it cost to administer this program for the first year? No new programs are created. This regulation impacts how Little Sandy Correctional Complex operates, but does not increase costs from what was previously budgeted to the institution.

(c) How much will it cost to administer this program for subsequent years? This regulation impacts how Little Sandy Correctional Complex operates, but is not expected to increase costs from what will be budgeted to Little Sandy Correctional Complex.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(New Administrative Regulation)

503 KAR 1:190. Certified Court Security Officers training academy.

RELATES TO: KRS 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Commissioner of the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training Certified Court Security Officer training academy and for maintenance of training records.

Section 1. Training Academy Graduation Requirements. To graduate from the department's certified court security officer training academy, a trainee shall:

(1) Successfully complete a minimum of eighty (80) hours of training, based upon the curriculum approved by the council in accordance with KRS 15.3975 and 503 KAR 1:090;

(2) Attain a seventy (70) percent overall score on the firearms qualification and written final examination. A trainee who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training;

(3) Pass the Defensive Tactics practical examination, with no major errors, for which a pass or fail designation is assigned. A trainee who does not pass the Defensive Tactics practical examination shall be considered to have failed basic training; and

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Failure and Repetition of the Training Academy. (1) A trainee that is removed from the academy due to failure shall:

(a) Be required to repeat the entire course; and

(b) Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(2) In accordance with 503 KAR 3:030, Section 6(2), the trainee's employing agency shall prepay to the department the full tuition, room, and board costs of repeating the academy. The employing agency may recover these costs of repeating the course from its trainee.

Section 3. Training Subjects. (1) The Training Academy shall be divided into fourteen (14) different training areas on the following subjects:

(a) Orientation;

(b) Introduction to Court Security Officer;

(c) Domestic terrorism;
(d) Court disturbances;
(e) Disguised weapons;
(f) Interference with judicial administration;
(g) Family security survey;
(h) Role of the sheriff;
(i) Courtroom protocol;
(j) Protecting the integrity of the jury;
(k) Crowd control;
(l) Bomb threats;
(m) Transporting prisoners;
(n) Specialized equipment;
(o) Use of force;
(p) Search and seizure;
(q) The criminal justice system;
(r) High risk trial planning;
(s) Introduction to defensive tactics;
(t) Ethical standards;
(u) Warrants and civil documents;
(v) Arrest of persons;
(w) Force continuum;
(x) Interpersonal communications;
(y) Firearms lecture;
(z) Firearms range;
(aa) Firearms qualification;
(bb) Firearms Decision Making (F.A.T.S.);
(cc) Practical test skill techniques;
(dd) Written test and class critique.

(2) If a trainee is unable to complete basic training, but legally entitled to complete the unfinished tested modules of the course, the trainee shall restart at the beginning of the module which he or she was in when the trainee left basic training.

Section 4. Examinations. (1) A trainee shall be examined and shall achieve the minimum score in each of the following three (3) areas:

(a) Firearms qualification - Seventy (70) percent;

(b) Written final examination - Seventy (70) percent;

(c) Defensive tactics practical examination - Pass, with no major errors.

(2) A trainee shall be permitted one (1) reexamination in each of the three (3) areas.

(3) A trainee who fails an examination, may request a reexamination not later than ten (10) days after the original examination.

(4) A trainee will not receive a certificate of completion until all tested areas are passed.

Section 5. Absence. (1) A trainee may have excused absences from the course with approval of the director of the certified school or his designee;

(2) An excused absence from the course which causes a trainee to miss any of the eighty (80) hours of basic training shall be made up through an additional training assignment;

(3) A trainee shall not be allowed excused absences for more than eight (8) hours of the hours of the academy. If a trainee misses more than eight (8) hours, he or she shall removed from the academy and reenrolled for a subsequent academy class in accordance with Section 6 of this administrative regulation.

Section 6. Circumstances Preventing Completion of the Training Academy. (1) If a trainee is prevented from completing the Training Academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he or she shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a trainee is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the trainee shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 7. Termination of Employment while Enrolled. If, while enrolled in the Training Academy, a trainee's employment as a Certified Court Security Officer is terminated by dismissal and he or she is unable to complete the course, he or she shall complete the remaining training within one (1) year of reemployment as a certified court security officer. The trainee shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the basic training course.

Section 8. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall notify the council of each trainee who has successfully completed the course.

(2) All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

LARRY BALL, Executive Director
For WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: February 6, 2008
FILED WITH LRC: February 6, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2008 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2008, 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 March 31, 2008. 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Certified Court Security Officer training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 15.3975 and to establish the curriculum that will be taught to those attending the training academy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15.3975(1) requires a court security officer hired after June 26, 2007 to complete at least 80 hours of training developed and approved by the Kentucky Law Enforcement Council and Administrative Office of the Courts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.3975 requires that all court security officers complete training established by the Kentucky Law Enforcement Council. This regulation sets clear and reasonable training requirements for all who attend the certified court security officer training academy conducted by

the Department of Criminal Justice Training.

(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: 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 regulation will affect every one of the 120 county sheriffs' offices that choose to hire persons for the position of Certified Court Security Officer.

(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 agencies should not have to take any actions. This administrative regulation relates only to the training curriculum for the trainees that attend the Certified Court Security Officers training academy. Similar requirements are already in place for those who attend law enforcement basic training and the telecommunications academies at the Department of Criminal Justice Training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance should not cost anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sheriffs' offices will receive well-trained court security officers who are able to perform court security duties as professionals.

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

(a) Initially: The current cost to train, feed, and house a trainee at the Department of Criminal Justice Training is $1,520 per week. There are 24 court security officers registered to attend the first class and DOCJT has scheduled nine training academies this year. It is estimated that it will cost DOCJT approximately $656,640 this year if each scheduled class is conducted and filled to capacity.

(b) On a continuing basis: This cost should remain the same for trainees attending the academy in the future.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 should be necessary.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect county sheriffs' offices whose court security officers must be certified. Court security officers are required to attend a two week training academy and must abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1) and (5), and 15.15.3975(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only effect that is expected on expenditures of county sheriffs' offices is the salary that they will pay a court security officer while he or she is in training. It should have no effect on revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Under KRS 15.3975(1), the training for court security officers has been increased to 80 hours from the old 32 hour training program. It will cost the Department of Criminal Justice Training approximately $1,520 weekly per trainee. There will be 24 court security officers in the first academy class and DOCJT has nine other courses scheduled for 2008. Therefore it is estimated that it will cost DOCJT approximately $656,640 this year if each schedule class is conducted and filled to capacity.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to be about the same as in the first year.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 11, 2008

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 11, 2008 at 1:30 p.m., in Room 149 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, the roll call was taken. The minutes of the January 7, 2007 meeting were approved. The meeting was then assumed by Representative Robert Damron.

Present were:

Members: 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, Laura Milam, Emily Caudill, Jennifer Beeler, Laura Napier, and Ellen Steinberg.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Gilda Hill, Dennis Shepherd, David Worley, Kentucky Department of Veterans Affairs; Chris Cohorn, Regina Carey, Janet Graham, Jennifer Black Hans, Ryan Reed, Linda Tally Smith, Prosecutors Advisory Council; Joe Cowles, James Lambert, Stephanie Mitchell, Fred Nelson, Eric Poston, Linda Patrick, Kentucky Employee Mediation Program; Nathan Goldman, Kentucky Board of Nursing; Ryan Halloran, Kentucky Board of Chiropractic Examiners; Becky Klusch, Board of Physical Therapy; David Casey, Darin Moore, Catherine York, Kentucky Department of Fish and WIldlife Resources; Kevin Noland, Kentucky Board of Education; Susan Bush, Michael Haynes, Marvin Collins, Department for Natural Resources; Brenda Parker, Melea Rivera, Jill Mitchell, Kentucky Office of Insurance; Jeff Jagnow, Chandra Venettozzi, Charles Warnick, Cabinet for Health and Family Services; Stephanie Brammer-Barnes, Office of Inspector General; Charles Douglass, Barry Ingram, Lisa Lee, Department for Medicaid Services; Shirley Eldridge, Jim Heth, Phyllis Sosa, Department of Aging and Independent Living; Elizabeth Caywood, Tim McClain, Justin Dearinger, Kathy Adams, Sandy Canon, Robert Hester, Department of Community Based Services; John Shupp.

The Administrative Regulation Review Subcommittee met on Monday, February 11, 2008 and submits this report:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: KHEAA Grant Programs

11 KAR 5:200. Go Higher Grant Program. Becky Gilpatrick, student aid branch manager, and Melissa Justice, senior associate counsel, represented the authority.

In response to a question by Co-Chair Roeding, Ms. Gilpatrick stated that the Go Higher Grant Program was a need-based program for adult students to return to school, which provided $1000 to cover the cost of tuition and books. She stated applicants had to complete an application form available on the authority's Website and the Free Application for Federal Student Aid. She stated that the authority sent information to adult education providers and colleges to make them aware of the program.

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 cross-reference the CAP grants, rather than federal Pell grants; and (3) to amend Section 2 to specify that a recipient shall not be incarcerated at either the time of application or receipt of the award. Without objection, and with agreement of the agency, the amendments were approved.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher Scholarships.

In response to a question by Representative Weston, Ms. Justice stated that certification by a physician of the recipient's inability to pursue any type of employment or a determination of disability by the Social Security Administration would be accepted as proof of disability.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1, 4, 7, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1, 2, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Osteopathic Medicine Scholarship Program

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment.

A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Early Childhood Development Scholarship Program

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Section 1 to change terminology to correspond with the language now used in 922 KAR 2:110 relating to child-care centers, rather than day care facilities. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GOVERNOR'S OFFICE: Kentucky Department of Veterans Affairs: State Veterans Nursing Homes

17 KAR 3:030. Drug testing procedures at Kentucky Department of Veterans Affairs state Veterans nursing homes. David Worly, executive director; Gilda Hill, veterans center administrator; and Dennis Shepherd, staff attorney, represented the department.

In response to questions by Co-Chair Damron, Mr. Worley stated that no decisions had been made about closing childcare centers but steps would have to be taken to cut costs.

Co-Chair Damron stated it would be very troubling if a decision was made to close a childcare center.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 3 through 6, 8, and 10 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ATTORNEY GENERAL: Prosecutors Advisory Council: Asset Forfeiture

40 KAR 4:010. Disbursement of asset forfeiture receipts. Chris Cohorn, Warren County Commonwealth attorney; Janet Graham, assistant deputy attorney general; Linda Talley-Smith, Boone

County Commonwealth attorney; and Jennifer Black Hans, assistant attorney general, represented the council.

In response to a question by Co-Chair Roeding, Ms. Talley-Smith stated that the money returned to the county that obtained the forfeiture for use in its operating budget.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to insert a statutory citation and delete language that repeated a statute; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4, 6, and two documents incorporated by reference to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 2:034. Classified compensation. Joe Cowles, legal services; James Lambert, personnel program manager; Fred Nelson, commissioner; Eric Poston, deputy commissioner; and Linda House Patrick, manager, Kentucky Employee Mediation Program, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:210 & E. Summary Plan Descriptions for the Public Employee Health Insurance Program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct typographical errors and change the edition dates of four documents; and (2) to amend four of the items incorporated by reference to delete ambiguous language regarding maintenance care and to delete the precertification chart. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:230. Kentucky Employee Mediation Program.

In response to a question by Co-Chair Roeding, Ms. Patrick stated that her office sometimes provided mediation, if requested to do so, for employees in the legislative and judicial branches of state government.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 2 to specify when the forms incorporated by reference were required to be used; and (4) to amend Section 5 to incorporate by reference the Mediation Request Form and the Agreement to Mediate. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Kentucky Board of Nursing: Board

201 KAR 20:220. Nursing continuing education provider approval. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to correct technical errors. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Board of Chiropractic Examiners: Board

201 KAR 21:081. Repeal of 201 KAR 21:080. Ryan Halloran, assistant attorney general, represnted the board.

In response to a question by Senator Kerr, Mr. Halloran stated that this administrative regulation repealed one that was duplicative of another administrative regulation.

Subcommittee staff stated that the provisions of the administrative regulation being repealed were added to another administrative regulation last fall.

Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Becky Klusch, executive director, represented the board.

In response to a question by Representative Weston, Ms. Klusch stated that this administrative regulation reduced the required hours of HIV/AIDS training from four (4) to two (2) because physical therapy schools provide additional education on the topic and few four (4) hour courses are offered. She stated that other health professionals' licensing boards required two (2) hours of training.

COMMERCE CABINET: Kentucky Department of Fish and Wildlife Resources: Licensing

301 KAR 5:100. Interstate Wildlife Violators Compact. Darin Moore, director of administrative services, and Catherine York, deputy general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 and 5 through 7 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (2) to add Section 7 to incorporate by reference the "Compact Manual." Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Kentucky Board of Education: School Administration and Finance

702 KAR 3:130. Internal accounting. Kevin Noland, general counsel, represented the board.

In response to a question by Co-Chair Roeding, Mr. Noland stated that this administrative regulation made changes to the accounting standards for funds raised by schools. He stated that the changes conformed to school districts' current practices and were approved by the superintendents advisory council.

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 the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Instructional Programs

705 KAR 4:250 & E. Energy Technology Engineering Career Pathway.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Natural Resources: Division of Oil and Gas

805 KAR 1:110. Underground injection control. Susan Bush, commissioner; Michael Haines, general counsel; and Michael Combs, assistant director, represented the department.

In response to questions by Co-Chairs Roeding and Damron, Mr. Combs stated that this administrative regulation governed the injection of substances such as water into formations to enhance gas recovery and did not apply to carbon dioxide. He stated that this administrative regulation was no more stringent than federal regulations.

Department of Public Protection: Office of Insurance: Insurance Contract

806 KAR 14:007. Rate and form filing for health insurers. Brenda Parker, branch manager, and Melea Rivera, regulation coordinator, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 2, 4 through 6, 9, and 10 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Health Insurance Contracts

806 KAR 17:005. Health Insurance forms and reports.

In response to a question by Co-Chair Roeding, Ms. Parker stated that the changes to the forms would make things easier.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; AND NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:150. Health Benefit plan rate filing requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1, 2, 3, and 5 through 11 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:500. Basic health benefit plan requirements.

In response to a question by Co-Chair Roeding, Ms. Parker stated this administrative regulation updated the requirements for the basic benefit plan and corrected citations to make things clearer for insurers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 5 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Health Provider Surveillance Data

902 KAR 19:020. Data reporting by health care providers. Chandra Venettozzi, Office of Health Policy, and Jeff Jagnow, administrative regulations coordinator, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to insert a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for this administrative regulation; (3) to amend Section 6 to state the criteria to be considered by the cabinet when determining whether to grant an extension or waiver; (4) to amend Section 7 to correct a citation; and (5) to amend Sections 1, 2, 3, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services

907 KAR 1:011 & E. Technical eligibility requirements. Barry Ingram, claims management; Lisa Lee, children's health; and Charles Douglas, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:038 & E. Hearing and Vision Program services.

In response to a question by Co-Chair Damron, Mr. Ingram stated that the changes to these administrative regulations would cost additional money

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:039 & E. Payments for hearing services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Sections 3 and 4 to specify that the professional fee shall be $21.50. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:054 & E. Primary care center and federally-qualified health center services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Sections 1 and 5 to cross-reference applicable statutory provisions. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:061 & E. Payments for ambulance transportation.

907 KAR 1:082 & E. Rural health clinic services.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:604 & E. Recipient cost-sharing.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 3, 6, 7, 9, 10, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:631 & E. Reimbursement of Vision Program services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Section 2 to: (a) correct a cross-reference to another administrative regulation; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:640 & E. Income standards for Medicaid.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, 3, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:645 & E. Resource standards for Medicaid.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:900 & E. KyHealth Choices benefit plans.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Aging Services

910 KAR 1:090. Personal care assistance services. Phyllis Sosa, branch manager; Shirley Eldridge, division of operation and support; and Jim Heth, program development, represented the

department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct citations; (2) to amend Section 2 to clarify the formula for calculating adjusted gross income and that the income eligibility requirements shall be applied to current participants at their next re-evaluations; (3) to amend Section 8 to create an exception from notice requirements in the event of an emergency; (4) to amend Section 9 to allow a provider to request a higher payment rate if services cannot be obtained at the standard rate; (5) to amend Section 10 to require completion of 54 semester hours and four years of experience to qualify to be a program coordinator; and (6) to amend Sections 2 through 10, and 14 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

910 KAR 1:160. Program and certification requirements for the adult day and Alzheimer's respite program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to delete superfluous language and insert citations to statutory definitions; (2) to amend Section 9 to cross-reference requirements for record-keeping; (3) to amend Section 10 to clarify the types of client notifications that must be maintained in client records; (4) to amend Section 11 to clarify the cabinet's duties after receipt of a plan for compliance; and (5) to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

910 KAR 1:231. Repeal of 910 KAR 1:230, Adult Day-Care Center Certification.

Department of Community Based Services: Child Support

921 KAR 1:380. Child Support Program application and interstate process. Elizabeth Caywood, commissioner's office, and Tim McClain, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend Section 1 to insert the titles of documents incorporated by reference; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 and materials incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:410. Child support collection and enforcement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 4 to correct the titles of forms incorporated by reference; (2) to amend Section 2 to insert citations; (3) to amend Section 3 to clarify when the cabinet will file a lien on an obligor's property; and (4) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:430. Child Support Administrative Hearings.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for the administrative regulation; and (3) to amend Sections 2 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Elizabeth Caywood, commissioner's office, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 6, and 7 to correct citations; (2) to amend Sections 14 and 16 to correct the title of a form incorporated by reference; (3) to amend Sections 3, 5, 8, 12 through 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 13 to clarify that training shall be provided only to the extent funds are available.. Without objection, and with agreement of the agency, the amendments were approved.

Day Care

922 KAR 2:002. Repeal of 922 KAR 2:001. Kathy Adams, assistant director; Sandy Canon, director; Elizabeth Caywood, commissioner's office; and Robert Hester, office of inspector general, represented the department.

922 KAR 2:090. Child-care center licensure.

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 8 to: (a) clarify that a corrective action plan for a violation posing an immediate threat shall be handled in accordance with KRS 199.896(5)(c); and (b) state that the child-care center shall be notified of the cabinet's decision regarding the plan within thirty (30) calendar days; (3) to amend Section 9 to clarify that intermediate sanctions depend upon the severity of the violation and clarify that certain actions shall, not may, result in license suspension or revocation; and (4) to amend Sections 1 through 5, 8, 9, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:100. Certification of family child-care homes.

In response to a question by Representative Weston, Ms. Caywood stated that this administrative regulation reduced the required liability insurance from $50,000 per child per occurrence to just $50,000 per occurrence. She stated this should reduce insurance costs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2(4) to state that an applicant shall be certified by an agency approved in accordance with 922 KAR 2:240; (2) to amend Section 2(11) to state that a change of location requires continued compliance with this administrative regulation; (3) to amend Section 3(3) to state that certification renewal will be approved within fifteen (15) calendar days; (4) to amend Section 5(1) to state that intermediate sanctions shall be based on the severity of the violation; (5) to amend Section 6(4) to state that an emergency condition shall be corrected within thirty (30) calendar days; (6) to amend Section 10(8) to clarify that the cabinet shall be notified when a telephone is temporarily out of service; (7) to amend Sections 10(9) and (10) to clarify what constitutes developmentally-appropriate equipment, toys, television, and video programs; (8) to amend Section 10(19) to clarify requirements for pool safety; (9) to amend Section 12(8) to clarify requirements for preparing formula; and (10) to amend the RELATES TO paragraph and Sections 1 through 6, 8, and 10 through 14 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:110. Child-care center provider requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the definition of "Type I child-care center" to clearly differentiate between nonresidential and residential settings; (2) to amend Section 4(1) to: (a) specify information to be included in a schedule of daily activities; and (b) clarify details of the annual written performance evaluation for staff; and (3) to

amend Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:120. Child-care center health and safety standards.

In response to a question by Senator Tapp, Ms. Caywood stated that the changes would allow for the use of wells approved by the local health department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend the definition of "Type I child-care center" to clearly differentiate between nonresidential and residential settings; (3) to amend Sections 3, 4, 8, 9, and 12 to specifically reference policies and laws that must be complied with when putting a child to sleep, assuring a safe premises, groundwater supply, and plumbing structure, preparing and serving food, and providing safe transportation; and (4) to amend Sections 1 through 4, 6 through 9 and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2:220. Educational Assistance Program.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax: Administration and Accounting

103 KAR 31:180 & E. Signature project refunds on construction costs.

Tax Increment Financing

103 KAR 50:050 & E. Incremental revenues for income and limited liability entity taxes.

GENERAL GOVERNMENT: Kentucky Real Estate Commission: Commission

201 KAR 11:121. Improper conduct.

Kentucky Board of Veterinary Examiners: Board

201 KAR 16:110. Prescriptions and dispensation of drugs for animal use.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:190 & E. Educational requirements for certification effective January 1, 2008.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver Improvement

601 KAR 13:070. KRS 159.051. Compliance verification for a minor.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Department of Workers' Claims

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services. 803 KAR 25:280. Certification of drug-free workplace.

Department of Public Protection: Office of Insurance: Insurance Contract

806 KAR 14:006. Property and casualty insurance form filings.

Kentucky Horse Racing Authority: Thoroughbred Racing

810 KAR 1:027. Entries, subscriptions, and declarations.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health

900 KAR 7:020 & E. Kentucky e-Health Corporation.

Office of Inspector General: Office

906 KAR 1:120. Informal dispute resolution. Stephanie Brammer-Barnes, internal policy analyst, represented the office.

Ms. Brammer-Barnes requested that this administrative regulation be deferred. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Department of Community Based Services: Child Welfare

922 KAR 1:350. Family preparation. Kathy Adams, assistant director; Sandy Canon, director; Elizabeth Caywood, commissioner's office; and Robert Hester, office of inspector general, represented the department.

In response to questions by Representative Ford, Co-Chair Damron, and Co-Chair Roeding, Ms. Caywood stated that this administrative regulation required a foster family or respite care provider to keep any guns and ammunition located in the home stored and locked separately in order to reduce the chance that a child being cared for would gain access to a loaded gun. She stated that department personnel checked to see if firearms and ammunition were locked as part of a home evaluation. She stated that although the language was clarified, the substance of the prohibition had not changed.

In response to a question by Representative Lee, Ms. Adams stated that separately locked drawers in a single cabinet met the requirement.

In response to questions by Co-Chair Damron, Ms. Adams stated that a foster parent having a gun in a car could potentially violate this administrative regulation if the child had access to it.

Ms. Caywood stated that the department would like to defer this administrative regulation and work with legislators to address their concerns. Without objection, and with agreement of the agency, this administrative regulation was deferred.

922 KAR 1:470. Central registry.

Day Care

922 KAR 2:160. Child care assistance program.

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child-care centers.

922 KAR 2:210. STARS for KIDS NOW Program for Type II licensed and certified family child-care homes.

The Subcommittee adjourned at 2:45 until March 10, 2008.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 13, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 13, 2008, having been referred to the Committee on February 6, 2008 pursuant to KRS 13A.290(6):

201 KAR 5:040
201 KAR 9:021
908 KAR 2:220
922 KAR 1:390

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 13, 2008 meeting, which are hereby incorporated by reference.

HOUSE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 14, 2008

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Welfare for its meeting of February 14, 2008, having been referred to the Committee on February 6, 2008 pursuant to KRS 13A.290(6):

201 KAR 5:040
201 KAR 9:021
908 KAR 2:220
922 KAR 1:390

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 14, 2008 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates I - 2

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 I - 13

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.

Technical Amendment Index I - 23

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2007 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

Subject Index I - 24

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.

VOLUME 33

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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	33 Ky.R. Page No.	Effective Date
31 KAR 5:010E	3325	4-2-07
Replaced		(See 34 Ky.R.)
201 KAR 20:070E	3586	5-11-07
Replaced	4205	8-16-07
301 KAR 2:221E	1493	11-1-06
Replaced	1625	3-9-07
301 KAR 2:222E	1494	11-1-06
Replaced	2275	3-9-07
301 KAR 2:223E	1500	11-1-06
Replaced	1632	3-9-07
502 KAR 32:010	3327	4-12-07
Replaced		(See 34 Ky.R.)
806 KAR 17:540E	1233	10-13-06
Replaced	1841	3-9-07
806 KAR 17:545E	1235	10-13-06
806 KAR 17:555E	1238	10-13-06
902 KAR 45:150E	1502	11-14-06
Replaced	1728	3-1-07
907 KAR 1:025E	3143	3-1-07
Replaced	4186	7-6-07
907 KAR 1:155		
Resubmitted	1058	9-1-06
Replaced	2314	3-9-07
907 KAR 3:010E		
Resubmitted	1062	9-1-06
908 KAR 2:190E	1507	10-17-06
Replaced	2324	3-1-07

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Regulation Number	33 Ky.R. Page No.	Effective Date
11 KAR 4:080		
Amended	3224	
As Amended	3589	7-6-07
11 KAR 5:033		
Amended	3225	
As Amended	3589	7-6-07
11 KAR 5:034		
Amended	3226	
As Amended	3590	7-6-07
11 KAR 5:140		
Amended	3228	7-6-07
11 KAR 6:010		
Amended	3230	
As Amended	3590	7-6-07
11 KAR 16:010		
Amended	3232	
As Amended	3592	7-6-07
11 KAR 16:070	3304	
As Amended	3593	7-6-07
16 KAR 1:030		
Amended	3423	7-19-07
16 KAR 9:080	3567	(See 34 Ky.R.)
17 KAR 1:020	3078	
As Amended	3593	7-6-07
31 KAR 3:010		
Amended	3235	
As Amended	3595	7-6-07
31 KAR 4:100		
Amended	3237	
As Amended	3596	
31 KAR 5:010		
Amended	3425	(See 34 Ky.R.)
101 KAR 2:046		
Amended	4195	(See 34 Ky.R.)
101 KAR 2:056		
Amended	4197	(See 34 Ky.R.)
101 KAR 2:066		
Amended	4199	(See 34 Ky.R.)
102 KAR 1:030		
Amended	3427	(See 34 Ky.R.)
102 KAR 1:036		
Amended	3428	(See 34 Ky.R.)
102 KAR 1:038		
Amended	3430	(See 34 Ky.R.)
102 KAR 1:175		
Amended	3431	(See 34 Ky.R.)
103 KAR 20:500	1013	
106 KAR 5:005	3113	
As Amended	3597	7-6-07
106 KAR 5:010	3114	
As Amended	3598	7-6-07
106 KAR 5:020	3116	
As Amended	3599	7-6-07
106 KAR 5:030	3118	
As Amended	3600	7-6-07
106 KAR 5:040	3120	
As Amended	3601	7-6-07
201 KAR 2:250		
Amended	4201	(See 34 Ky.R.)
201 KAR 2:260	3305	
As Amended	3602	6-20-07
201 KAR 9:460	4269	(See 34 Ky.R.)
201 KAR 11:220		
Amended	3434	8-31-07
201 KAR 16:010		
Amended	3238	(See 34 Ky.R.)
201 KAR 16:060		
Amended	3240	
Withdrawn		5-30-07
201 KAR 18:040		
Amended	4203	8-31-07
201 KAR 18:111	3569	(See 34 Ky.R.)
201 KAR 20:070		
Amended	4205	8-16-07
201 KAR 20:370		
Amended	4207	8-16-07
201 KAR 20:411		
Amended	4209	8-16-07
201 KAR 22:020		
Amended	3436	8-16-07
201 KAR 22:040		
Amended	3438	8-16-07
201 KAR 30:180		
Amended	4211	(See 34 Ky.R.)
201 KAR 36:070		
Amended	3242	6-20-07
202 KAR 6:020		
Amended	4214	(See 34 Ky.R.)
202 KAR 6:030		
Amended	4217	(See 34 Ky.R.)
202 KAR 6:060		
Amended	4218	(See 34 Ky.R.)
202 KAR 6:070		
Amended	4220	(See 34 Ky.R.)
202 KAR 6:100		
Amended	4221	(See 34 Ky.R.)
301 KAR 2:122	2831	6-13-07

Regulation Number	33 Ky.R. Page No.	Effective Date
301 KAR 2:132		
Amended	3440	(See 34 Ky.R.)
301 KAR 2:172		
Amended	3444	(See 34 Ky.R.)
301 KAR 2:174		
Repealed	3570	8-6-07
301 KAR 2:175*(r)*	3570	8-6-07
301 KAR 2:177	3571	8-6-07
301 KAR 2:178		
Amended	3447	8-6-07
301 KAR 2:179		
Repealed	3571	8-6-07
301 KAR 2:185		
Amended	3243	
As Amended	3603	6-13-07
301 KAR 2:195		
Amended	3452	(See 34 Ky.R.)
301 KAR 2:251		
Amended	3426	
As Amended	3604	6-13-07
301 KAR 3:022		
Amended	3456	8-6-07
301 KAR 5:030		
Amended	4224	8-23-07
401 KAR 57:002		
Amended	4227	(See 34 Ky.R.)
401 KAR 58:025		
Amended	4229	(See 34 Ky.R.)
401 KAR 60:005		
Amended	4231	(See 34 Ky.R.)
401 KAR 60:670		
Amended	4234	(See 34 Ky.R.)
401 KAR 63:002		
Amended	4236	
401 KAR 63:023*(r)*	4270	
Withdrawn		8-21-07
401 KAR 64:001	4271	
Withdrawn		8-21-07
401 KAR 64:005	4275	
Withdrawn		8-21-07
401 KAR 64:010	4279	
Withdrawn		8-21-07
401 KAR 64:020	4283	
Withdrawn		8-21-07
401 KAR 64:030	4286	
Withdrawn		8-21-07
401 KAR 64:050	4288	
Withdrawn		8-21-07
501 KAR 6:020		
Amended	4241	(See 34 Ky.R.)
501 KAR 6:030		
Amended	4243	(See 34 Ky.R.)
501 KAR 6:070		
Amended	4245	(See 34 Ky.R.)
501 KAR 6:240		
Amended	4247	(See 34 Ky.R.)
502 KAR 20:020		
Amended	4249	(See 34 Ky.R.)
502 KAR 32:010		
Amended	3459	(See 34 Ky.R.)
503 KAR 1:170		
Amended	4253	(See 34 Ky.R.)
603 KAR 4:045		
Amended	3042	
As Amended	4162	7-6-07
701 KAR 5:110		
Amended	3045	7-6-07
702 KAR 7:065		
Amended	3461	(See 34 Ky.R.)
707 KAR 1:280		
Amended	3463	(See 34 Ky.R.)
707 KAR 1:290		
Amended	3468	
707 KAR 1:300		
Amended	3470	(See 34 Ky.R.)
707 KAR 1:310		
Amended	3473	(See 34 Ky.R.)
707 KAR 1:320		
Amended	3476	(See 34 Ky.R.)
707 KAR 1:330		
Repealed	3572	11-5-07
707 KAR 1:331*(r)*	3572	11-5-07
707 KAR 1:340		
Amended	3480	(See 34 Ky.R.)
707 KAR 1:350		
Amended	3488	(See 34 Ky.R.)
707 KAR 1:360		
Amended	3490	(See 34 Ky.R.)
707 KAR 1:370		
Amended	3492	(See 34 Ky.R.)
707 KAR 1:380		
Amended	3496	(See 34 Ky.R.)
802 KAR 1:010		
Amended	2202	
Amended	3217	
As Amended	4164	7-6-07
803 KAR 2:300		
Amended	3499	(See 34 Ky.R.)
803 KAR 2:305		
Amended	3501	(See 34 Ky.R.)
803 KAR 2:318		
Amended	3503	(See 34 Ky.R.)
804 KAR 9:040		
Amended	3506	8-6-07
805 KAR 7:010		
Amended	3076	
Amended	3413	(See 33 Ky.R.)
805 KAR 7:100	3124	
Amended	3414	(See 33 Ky.R.)
805 KAR 11:001	3126	(See 34 Ky.R.)
Amended	3416	
805 KAR 11:010	3128	(See 34 Ky.R.)
Amended	3417	
805 KAR 11:020	3130	(See 34 Ky.R.)
Amended	3419	
806 KAR 6:120	4290	(See 34 Ky.R.)
806 KAR 12:120	4292	(See 34 Ky.R.)
806 KAR 12:140	4294	(See 34 Ky.R.)
806 KAR 12:150	4299	(See 34 Ky.R.)
806 KAR 12:160	4301	(See 34 Ky.R.)
806 KAR 12:170	4305	(See 34 Ky.R.)
806 KAR 14:005		
Amended	4258	(See 33 Ky.R.)
806 KAR 15:060	4307	(See 34 Ky.R.)
806 KAR 15:070	4311	(See 34 Ky.R.)
815 KAR 4:010		
Amended	3249	
As Amended	4167	7-6-07
815 KAR 7:120		
Amended	3250	
As Amended	4168	7-6-07
815 KAR 7:125		
Amended	3253	(See 34 Ky.R.)
815 KAR 10:060		
Amended	3255	
As Amended	4169	7-6-07
815 KAR 20:015	3308	
As Amended	4172	7-6-07
815 KAR 20:020		
Amended	3258	7-6-07
815 KAR 20:078		
Amended	3262	
815 KAR 20:110		
Amended	3264	

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As Amended	4173	7-6-07
815 KAR 20:120		
Amended	3266	
As Amended	4174	7-6-07
815 KAR 20:130		
Amended	3273	
As Amended	4180	7-6-07
815 KAR 20:150		
Amended	3277	
As Amended	4183	7-6-07
815 KAR 35:060		
Amended	3279	
As Amended	4184	7-6-07
820 KAR 1:001		
Amended	3508	(See 34 Ky.R.)
820 KAR 1:015		
Amended	3511	(See 34 Ky.R.)
820 KAR 1:025		
Amended	3512	(See 34 Ky.R.)
820 KAR 1:029		
Amended	3514	8-31-07
820 KAR 1:032		
Amended	3516	(See 34 Ky.R.)
820 KAR 1:036		
Amended	3518	(See 34 Ky.R.)
820 KAR 1:046		
Amended	3522	(See 34 Ky.R.)
820 KAR 1:050		
Amended	3525	(See 34 Ky.R.)
820 KAR 1:055		
Amended	3526	(See 34 Ky.R.)
820 KAR 1:056		
Amended	3528	8-31-07
820 KAR 1:057		
Amended	3530	(See 34 Ky.R.)
820 KAR 1:058		
Amended	3531	(See 34 Ky.R.)
820 KAR 1:120		
Amended	3536	(See 34 Ky.R.)
900 KAR 6:050		
Amended	3282	(See 34 Ky.R.)
902 KAR 2:080		
Amended	3295	(See 34 Ky.R.)
902 KAR 105:040		
Amendment	1733	(See 34 Ky.R.)
902 KAR 105:060		
Repealed	1759	10-17-07
902 KAR 105:061*(r)*	1759	10-17-07
902 KAR 105:070		
Amendment	1736	(See 34 Ky.R.)
907 KAR 1:025		
Amended	3297	
As Amended	4186	7-6-07
907 KAR 3:005		
Amended	4259	
Withdrawn		7-12-07
907 KAR 3:010		
Amended	4264	7-12-07
908 KAR 3:050		
Amended	3537	(See 34 Ky.R.)
908 KAR 3:060		
Amended	3539	(See 34 Ky.R.)
922 KAR 1:300		
Amended	3543	(See 34 Ky.R.)
922 KAR 1:310		
Amended	3552	(See 34 Ky.R.)

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 5:010E		(See 33 Ky.R.)
Replaced	12	8-6-07
101 KAR 2:210E	1627	12-7-07
103 KAR 3:010E	2066	2-11-08
103 KAR 3:040E	1925	1-15-08
103 KAR 31:180E	1350	11-15-07
103 KAR 50:020E	531	7-31-07
Expired		1-27-08
103 KAR 50:030E	703	8-16-07
Replaced	1701	2-1-07
103 KAR 50:040E	532	7-31-07
Expired		1-27-08
103 KAR 50:050E	704	8-16-07
105 KAR 1:390E	534	8-15-07
Replaced	1388	1-4-08
106 KAR 2:020E	156	6-25-07
Replaced	707	11-1-07
201 KAR 30:190E	1628	12-14-07
301 KAR 2:221E	1351	11-14-07
301 KAR 2:222E	1354	11-14-07
301 KAR 2:225E	907	10-15-07
307 KAR 1:040E	909	10-8-07
401 KAR 51:001E	912	9-28-07
Withdrawn		1-10-08
401 KAR 51:017E	924	9-28-07
Withdrawn		1-10-08
401 KAR 51:052E	939	9-28-07
Withdrawn		1-10-08
401 KAR 52:001E	953	9-28-07
Withdrawn		1-10-08
502 KAR 32:010E		(See 33 Ky.R.)
Replaced	27	8-6-07
503 KAR 1:190E	2069	2-6-08
705 KAR 4:250E	1662	12-14-07
806 KAR 17:180E	537	7-13-07
Replaced	1507	2-1-08
806 KAR 17:545E	157	6-29-07
Replaced	1427	1-4-08
806 KAR 17:555E	161	6-29-07
Expired		12-26-07
900 KAR 7:020E	958	9-18-37
907 KAR 1:011E	1634	11-20-07
907 KAR 1:013E	***	10-15-07
Withdrawn		11-15-07
Resubmitted	1358	11-15-07
907 KAR 1:015E	164	7-12-07
907 KAR 1:038E	1641	11-20-07
907 KAR 1:039E	1645	11-20-07
907 KAR 1:054E	1647	11-20-07
907 KAR 1:061E	1374	10-25-07
907 KAR 1:082E	1651	11-20-07
907 KAR 1:145E	167	7-12-07
Replaced	1453	1-4-08
907 KAR 1:160E	1653	12-5-07
907 KAR 1:170E	181	7-12-07
Replaced	1465	1-4-08
907 KAR 1:604E	1660	11-20-07
907 KAR 1:631E	1666	11-20-07
907 KAR 1:640E	1668	11-20-07
907 KAR 1:645E	1672	11-20-07
907 KAR 1:672E	185	7-12-07
Replaced	1470	1-4-08

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907 KAR 1:815E	1376	11-15-07
907 KAR 1:820E	1381	11-15-07
907 KAR 1:900E	1676	11-20-07
907 KAR 3:005E	190	7-12-07
Replaced	1474	1-4-08
907 KAR 3:010E	195	7-12-07
Replaced	1478	1-4-08
907 KAR 3:090E	199	7-12-07
Replaced	1480	1-4-08
920 KAR 2:040E	5	6-4-07
Replaced	1494	12-17-07
921 KAR 2:015E	1680	12-07-07
922 KAR 1:050E	212	7-12-07
Replaced	1497	12-17-07
922 KAR 1:360E	216	6-28-07
Replaced	1500	12-17-07

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Regulation Number	34 Ky.R. Page No.	Effective Date
11 KAR 3:100		
Amended	93	9-10-07
11 KAR 5:001		
Amended	822	
As Amended	1386	1-4-08
11 KAR 5:034		
Amended	824	
As Amended	1387	1-4-08
11 KAR 5:145		
Amended	106	9-10-07
11 KAR 5:200		
Amended	1761	
As Amended	2073	
11 KAR 8:030		
Amended	1762	
As Amended	2074	
11 KAR 8:040		
Amended	1766	
As Amended	2076	
11 KAR 14:080		
Amended	1769	
As Amended	2078	
11 KAR 16:001		
Amended	1771	
As Amended	2079	
11 KAR 16:010		
Amended	1773	
As Amended	2079	
11 KAR 16:060		
Amended	1775	
As Amended	2081	
13 KAR 2:020		
Amended	108	
Amended	590	
As Amended	961	12-7-07
16 KAR 1:010		
Amended	1074	
As Amended	1686	2-1-08
16 KAR 1:030		(See 33 Ky.R.)
As Amended	9	
16 KAR 2:010		
Amended	1079	
As Amended	1687	2-1-08
16 KAR 4:010		
Amended	1079	
As Amended	1689	2-1-08
16 KAR 5:010		
Amended	1081	
As Amended	1690	2-1-08
16 KAR 8:021		
Repealed	1699	2-1-08
16 KAR 8:022*(r)*	1297	
As Amended	1699	2-1-08
16 KAR 9:080		(See 33 Ky.R.)
As Amended	10	7-19-07
17 KAR 3:030	1899	
As Amended	2082	
31 KAR 4:120		
Amended	826	
As Amended	1388	1-4-08
31 KAR 5:010		(See 33 Ky.R.)
As Amended	12	8-6-07
31 KAR 5:020		
Repealed	888	1-4-08
31 KAR 5:030		
Repealed	888	1-4-08
31 KAR 5:031*(r)*	888	1-4-08
31 KAR 6:030		
Amended	112	
As Amended	540	10-5-07
31 KAR 6:040	2250	
40 KAR 4:010		
Amended	1777	
As Amended	2084	
101 KAR 1:325		
Amended	2022	
101 KAR 1:335		
Amended	1517	
101 KAR 2:034		
Amended	1519	
As Amended	2085	
101 KAR 2:046		(See 33 Ky.R.)
As Amended	223	8-31-07
101 KAR 2:056		(See 33 Ky.R.)
As Amended	224	8-31-07
101 KAR 2:066		(See 33 Ky.R.)
As Amended	225	8-31-07
101 KAR 2:120		
Amended	614	
As Amended	964	12-7-07
101 KAR 2:210		
Amended	1091	
Withdrawn		12-7-07
Amended	1779	
As Amended	2089	
101 KAR 2:220	1587	
101 KAR 2:230	1591	
As Amended	2089	
102 KAR 1:030		(See 33 Ky.R.)
As Amended	227	8-31-07
102 KAR 1:036		(See 33 Ky.R.)
As Amended	228	8-31-07
102 KAR 1:038		(See 33 Ky.R.)
As Amended	228	8-31-07
102 KAR 1:175		(See 33 Ky.R.)
As Amended	13	7-19-07
103 KAR 3:010		
Amended	2203	
103 KAR 3:040		
Amended	2024	
103 KAR 8:130	673	
As Amended	967	12-7-07
103 KAR 8:140	374	
As Amended	967	12-7-07
103 KAR 8:150	675	
As Amended	968	12-7-07
103 KAR 31:180	1592	
103 KAR 50:020	677	
As Amended	1700	2-1-08
103 KAR 50:030	889	
As Amended	1701	2-1-08
103 KAR 50:040	678	
As Amended	1702	2-1-08
103 KAR 50:050	890	
105 KAR 1:180		

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Amended	115	
As Amended	541	10-5-07
105 KAR 1:200		
Amended	117	
As Amended	542	10-5-07
105 KAR 1:240		
Amended	119	
As Amended	544	10-5-07
105 KAR 1:270		
Amended	121	
As Amended	545	10-5-07
105 KAR 1:380		
Amended	124	
As Amended	547	10-5-07
105 KAR 1:390	680	
As Amended	1388	1-4-08
106 KAR 2:020	506	
As Amended	708	11-1-07
109 KAR 13:010		
Amended	827	
Amended	1506	2-1-08
109 KAR 15:020		
Amended	616	
As Amended	968	11-20-2007
200 KAR 17:011*(r)*	144	
As Amended	548	10-5-07
200 KAR 17:060		
Repealed	548	10-5-07
201 KAR 1:160		
Amended	1093	
201 KAR 2:040		
Amended	1095	
As Amended	1703	2-1-08
201 KAR 2:250		(See 33 Ky.R.)
As Amended	229	8-16-07
201 KAR 2:300	2252	
201 KAR 5:040		
Amended	1523	
As Amended	1935	
201 KAR 8:220		
Amended	331	10-17-07
201 KAR 8:450		
Amended	126	9-19-07
201 KAR 9:021		
Amended	1525	
As Amended	1935	
201 KAR 9:460		(See 33 Ky.R.)
As Amended	231	8-16-07
201 KAR 11:121		
Amended	829	
201 KAR 11:170		
Amended	831	
As Amended	1937	
201 KAR 11:175		
Amended	834	
Withdrawn		1-2-08
201 KAR 11:210		
Amended	836	
As Amended	1939	
201 KAR 11:230		
Amended	838	
As Amended	1940	
201 KAR 11:240	893	
As Amended	1945	
201 KAR 11:450		
Amended	843	
As Amended	1946	
201 KAR 13:080		
Amended	618	
As Amended	968	11-19-07
201 KAR 14:050		
Amended	332	
As Amended	708	11-2-07
201 KAR 15:030		
Amended	1527	
201 KAR 15:110		
Amended	1528	
As Amended	1948	
201 KAR 16:010		(See 33 Ky.R.)
As Amended	15	8-6-07
201 KAR 16:110	1902	
201 KAR 18:040		
Amended	1097	
As Amended	1704	2-1-08
201 KAR 18:072		
Amended	1099	
As Amended	1705	2-1-08
201 KAR 18:110		
Repealed	17	8-6-07
201 KAR 18:111*(r)*		(See 33 Ky.R.)
As Amended	17	8-6-07
201 KAR 18:196	1299	
As Amended	1705	2-1-08
Amended	2206	
201 KAR 20:056		
Amended	1781	
Amended	2182	
201 KAR 20:057		
Amended	1783	
Amended	2184	
201 KAR 20:220		
Amended	1785	
201 KAR 20:250		
Repealed	506	10-17-07
201 KAR 20:251*(r)*	506	10-17-07
201 KAR 20:260		
Amended	333	
201 KAR 20:270		
Amended	336	
Withdrawn		9-10-07
Amended	1787	
201 KAR 20:280		
Amended	338	
As Amended	709	10-17-07
201 KAR 20:290		
Amended	341	
Withdrawn		9-10-07
Amended	1789	
201 KAR 20:300		
Repealed	506	10-17-07
201 KAR 20:310		
Amended	344	
As Amended	711	10-17-07
201 KAR 20:320		
Amended	347	10-17-07
As Amended		
201 KAR 20:330		
Repealed	506	10-17-07
201 KAR 20:340		
Amended	349	
As Amended	714	10-17-07
201 KAR 20:350		
Amended	350	
As Amended	715	10-17-07
201 KAR 20:360		
Amended	352	
Withdrawn		9-10-07
Amended	1792	
201 KAR 20:450		
Amended	355	
As Amended	715	10-17-07
201 KAR 20:470		
Amended	1100	
As Amended	1707	2-1-08

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201 KAR 21:030		
Repealed	1390	12-17-07
201 KAR 21:032	683	
As Amended	1390	12-17-07
201 KAR 21:041		
Amended	1530	
201 KAR 21:060		
Amended	619	
As Amended	1390	12-17-07
201 KAR 21:065		
Amended	621	
As Amended	1391	12-17-07
201 KAR 21:070		
Amended	1532	
Amended	2186	
201 KAR 21:081	1594	
201 KAR 21:095		
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(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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68.250	109 KAR 15:020
68.275	109 KAR 15:020
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133.120	103 KAR 3:010
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134.020	103 KAR 3:010
134.390	103 KAR 3:010
134.420	103 KAR 3:010
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134.440	103 KAR 3:010
134.500	103 KAR 3:010
134.580	103 KAR 3:010
134.590	103 KAR 3:010
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134.820	103 KAR 3:010
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134.830	103 KAR 3:010
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136.020	103 KAR 3:010
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141.170	103 KAR 3:040
141.180	103 KAR 3:040
141.200	103 KAR 3:040
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141.208	103 KAR 3:040
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143.030	103 KAR 3:010
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143.085	103 KAR 3:010
143.990	103 KAR 3:010
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199.898	922 KAR 2:160
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257.020	302 KAR 20:010
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322.060	201 KAR 18:040
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322.100	201 KAR 18.040
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324.090	201 KAR 11:230
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334A.030	907 KAR 1:038
334.010	907 KAR 1:038
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341.380	787 KAR 1:090
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405.520	921 KAR 1:380
405.991	921 KAR 1:400
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435.531	907 KAR 1:605
435.540	907 KAR 1:605
435.541	907 KAR 1:605
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440.10	907 KAR 1:013
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440.50	907 KAR 3:005
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440.140	907 KAR 1:815
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440.170	907 KAR 1:061
441.005	501 KAR 3:010
441.30	907 KAR 1:038
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441.064	501 KAR 3:050
441.075	501 KAR 3:050
441.115	501 KAR 3:040
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441.140	907 KAR 1:013
441.560	501 KAR 13:010
441.201	907 KAR 1:013
441.215	109 KAR 15:020
441.235	109 KAR 15:020
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454.220	921 KAR 1:400
457.310	907 KAR 1:038
488.301	906 KAR 1:120
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532.100	501 KAR 2:020
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571.213	922 KAR 2:100
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	922 KAR 2:110
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620.045	920 KAR 2:040
620.050	920 KAR 2:040
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